

No. 12395

United States
Court of Appeals
For the Ninth Circuit.

RUIS PARKER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
Western District of Washington,
Northern Division.

FILED

JAN 4 - 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

ALLAN POMEROY and

ERNEST R. CLUCK,

Attorneys for Appellant,

Smith Tower,

Seattle 4, Washington.

J. CHARLES DENNIS and

JOHN F. DORE,

Attorneys for Appellee,

1017 United States Court House,

Seattle 4, Washington.

United States District Court, Western District of
Washington, Northern Division

No. 47756

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUIS PARKER,

Defendant.

INDICTMENT

The Grand Jury Charges:

Count I.

On or about the 24th day of November, 1948, at Seattle, in the Northern Division of the Western District of Washington, Ruis Parker did knowingly receive and conceal a quantity of narcotic drugs, to wit: Two Hundred Ninety-four (294) grains of Opium Prepared for Smoking and Seventy-five (75) grains of Yen Shee, knowing the same to have been imported into the United States contrary to law.

All in violation of Section 174, Title 21, U.S.C.

A True Bill

/s/ THOMAS H. OLIN,

Foreman.

/s/ J. CHARLES DENNIS,

U. S. Attorney.

/s/ VAUGHN E. EVANS,

Asst. U. S. Attorney.

[Endorsed]: Filed Dec. 29, 1948.

[Title of District Court and Cause.]

ARRAIGNMENT AND PLEA

Before: The Honorable John C. Bowen,
District Judge.

January 3, 1949, 9:30 o'clock, A.M.

The Court: The Court has before it the Indictment in the case of the United States of America, Plaintiff, vs. Ruis Parker, Defendant. Has the defendant received from the United States Attorney a copy of this Indictment against him?

Defendant Parker: Yes, sir.

The Court: Is your name as written in the Indictment; namely, R-u-i-s as the given name and P-a-r-k-e-r as the family name your true and correct name?

Defendant Parker: Yes, sir.

The Court: The defendant is now in person before the Court, is that true?

Defendant Parker: Yes, sir.

The Court: With his counsel, Judge Pomeroy?

Defendant Parker: Yes, sir.

The Court: Judge Pomeroy, do you agree to act for this defendant as his counsel?

Judge Pomeroy: Yes, Your Honor.

The Court: Does the defendant accept Judge Pomeroy as his counsel?

Defendant Parker: That's right.

The Court: Does the defendant waive the reading of the Indictment?

Judge Pomeroy: The reading of the Indictment is now waived.

The Court: Is the defendant ready to enter his plea?

Judge Pomeroy: We are ready to enter a plea of not guilty, if the Court please, giving us a week for the opportunity to move against the Indictment.

The Court: The right for seven days from this date to move against the Indictment is preserved, notwithstanding the plea which may be entered. What is the defendant's plea to this Indictment, consisting of Count I and only Count I, guilty or not guilty?

Defendant Parker: Not guilty.

The Court: Let that plea be entered.

(Case to be placed on assignment calendar for February 23, 1949.)

[Endorsed]: Filed Jan. 6, 1949.

[Title of District Court and Cause.]

MOTION TO SUPPRESS EVIDENCE

Comes Now the defendant, Ruis Parker, by his attorney of record, Allan Pomeroy, and hereby moves this Court that certain property which is hereafter more particularly described, of which he is the owner and which was on the 24th day of November, 1948, from his premises unlawfully seized and taken from him, be returned to him and that

it be suppressed as evidence, as well as any evidence obtained as a result of the unlawful search and seizure. Description of the property:

294 grains of Opium prepared for smoking
75 grains of Yen Shee

all of which property was seized against the will of of the petitioner and without a search warrant or a warrant of arrest, and prior to the arrest of your petitioner without a warant, and after an exploratory search, in clear violation of the rights of your petitioner under the provisions of the Fourth and Fifth Amendments to the Constitution.

/s/ ALLAN POMEROY,
Attorney for Petitioner.

Receipt of copy acknowledged.

[Endorsed]: Filed April 21, 1949.

[Title of District Court and Cause.]

PETITION IN SUPPORT OF
MOTION TO SUPPRESS

Comes Now the defendant, Ruis Parker, residing at Apt. B, 1219½ Yesler Way, in the City of Seattle, Northern Division of the Western District of Washington, and states and alleges as follows:

By indictment filed in the Northern Division of the Western District of Washington, I was indicted for violating Section 174, Title 21, U.S.C.

I interposed a plea of "Not Guilty" to the said charge.

On November 24, 1948, I was lawfully in my residence at Apt. B, 1219½ Yesler Way, in the City of Seattle, Washington; the door to my apartment was locked and the outside door to the apartment building was locked; that I was asleep in my apartment; that 5 officers walked into my bedroom and awakened me and then, over my objection, then searched the premises of my apartment. In this search the property described in my Motion hereto attached was found and I was then placed under arrest. The said agents or officers had no right to enter my premises and make a search and place me under arrest without a warrant of arrest or a search warrant.

I, therefore, claim that my rights were invaded in the seizure of my personal property and I ask and pray for the return of that property and that the evidence, if it is intended to be used against me, obtained without a lawful search warrant and warrant of arrest, be suppressed, as my rights under the provisions of the Fourth and Fifth Amendments of the Constitution have clearly been violated, and I respectfully pray for the following relief:

1. That all such evidence be excluded upon the trial of the action, and that this Honorable Court now make its order of suppression.

2. That all of the aforesaid property so unlawfully seized without a search warrant or warrant of arrest which was obtained from me by means of a trespass be returned to me.

Dated at Seattle, Washington, this 16th day of April, 1949.

/s/ RUIS PARKER,
Petitioner.

State of Washington,
County of King,
City of Seattle—ss.

Ruis Parker, above named, being duly sworn, deposes and says: That he is the petitioner herein, that he has read and knows the contents of the foregoing petition, and that the same is true to his own knowledge.

/s/ RUIS PARKER.

Subscribed and Sworn to before me this 16th day of April, 1949.

[Seal] /s/ MARIAN M. PARKS,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed April 21, 1949.

[Title of District Court and Cause.]

AFFIDAVITS OF ROBERT W. MORRIS, ROBERT W. WAITT, ROBERT R. MUSSELMAN AND ANDREW E. ZUARRI

Comes now the plaintiff United States of America and furnishes herewith affidavits of Robert W. Mor-

ris, Robert W. Waitt, Robert R. Musselman and Andrew E. Zuarri in opposition to the Defendant's Motion to Suppress Evidence.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ VAUGHN E. EVANS,
Assistant U. S. Attorney.

AFFIDAVIT OF ROBERT W. MORRIS

United States of America,
Western District of Washington,
Northern Division—ss.

Robert W. Morris, being first duly sworn, on oath deposes and says:

I am a Captain of the Seattle Police Force in charge of the Felony Detail.

On the night of November 24, 1948, I was in my office in the Police Department about 9:30 P.M. when I received a telephone call from an unknown party. The voice on the telephone stated that there was an unconscious man in the apartment at the head of the stairs on the Second floor at 1219½ Yesler Way; that the man looked like he was dying. The voice on the phone refused to reveal his identity, but stated he would meet the officers at the door.

Since I was just about to leave the Police Department with my detail, I decided to go to the address given by the voice on the telephone to investigate. The police receive calls such as this every day, which arise from assault, attempted

suicides, overdoses of sleeping tablets, food poisonings and the like.

I went with my Squad to 1219½ Yesler Way. I left two men in the car and took two men with me. The building at this address is an apartment house. The front door was unlocked, as are the front doors of most apartment houses. We walked to the front door and up the stairs. There was no one in hallways or on the stairs. The lights were on and visibility was good.

At the head of the stairs on the left was a door which was open about a foot. I pushed the door all the way open and called out "Is anybody home?" No response was heard. We walked into the first room, which was a living room, and found no one in that room. I called out three or four times "Is anyone home?" as we walked through the living room into the dining room. There was no response. There was a door leading from the dining room which was closed. I opened this door and saw a man lying on a bed. I walked on in and as I did so the man opened his eyes. I said "What seems to be the trouble?" The man on the bed, whom I later learned to be Ruis Parker, said "There it is." I said "There what is?" He said again "There it is," pointing to an opium smoking outfit on the bed. I then identified myself as Captain Morris of the Police Department. Parker said "Yes, I know, help yourself." I had never seen Parker before, but he apparently knew me.

The outfit was examined and a small jar of opium

was accompanying the outfit. I caused the premises to be searched and found 294 grains of Opium prepared for smoking and 75 grains of Yen Shee.

I never did see the man who was supposed to have made the telephone call.

Two days later, I called the Federal Bureau of Narcotics and turned the evidence over to them.

/s/ ROBERT W. MORRIS.

Subscribed and sworn to before me this 25th day of April, 1949.

[Seal] /s/ VAUGHN E. EVANS,
Notary Public in and for the State of Washington,
residing at Seattle.

AFFIDAVIT OF ROBERT W. WAITT

United States of America,
Western District of Washington,
Northern Division—ss.

Robert W. Waitt, being first duly sworn, on oath deposes and says:

I, Robert W. Waitt, am a detective on the Seattle Police Force.

On November 24, 1948, about 9:00 o'clock in the evening, I was in Captain Morris' office with other members of the Felony Detail. We were just getting ready to leave when Captain Morris got a telephone call. When Captain Morris got through with the telephone call, he said "Come on, let's go take a look, a man has been poisoned." I said

“Where?” Captain Morris said “Meet me at 12th and Yesler.” Detective Zuarri and I went to our Police car and drove to 12th and Yesler. Captain Morris was waiting on the corner when we got there. As we met Capt. Morris, Detective Musselman and Detective Ivy came up. We had all arrived from the Police Station by three cars, as we were all going out on other business together.

Capt. Morris said to myself and Detective Musselman to come with him and for Detective Zuarri and Ivy to stay downstairs.

The three of us went into the main entrance of an apartment house. The door was not locked, which is usual in most apartment houses in that area. The lights were on and visibility was good in all the hallways. We saw no one. We went up the stairs, Capt. Morris in the lead, and at the head of the stairs on the left was a door which was open about eight inches. Capt. Morris pushed the door all the way open and called out “Is anybody home?” There was no response. We walked on into the living room, through an arch into the dining room, as Capt. Morris kept calling “Is anybody home?” There was no response.

There was a door which was closed leading from the dining room. Capt. Morris opened this door and walked in. There was a light on in this room, but no other lights on in the apartment. However, the rest of the apartment was lighted by street lights.

As Captain Morris walked in, I was right behind

him. There was a man on the bed. Capt. Morris asked the man a question and the man said "There it is." I am not sure just what Capt. Morris had asked the man, but I believe it was "What's the trouble?" I was standing at the foot of the bed and saw an opium smoking outfit on the bed near the foot. There was also a small jar of opium on the bed. Capt. Morris identified himself and the man whom I later learned to be Ruis Parker said "I have been expecting you," or words to that effect.

Capt. Morris asked Parker if this was an opium smoking outfit and Parker said "Yes." Capt. Morris placed Parker under arrest. We then searched the apartment and found 294 grains of Opium prepared for smoking and 75 grains of Yen Shee. I had never seen or heard of Ruis Parker before.

/s/ ROBERT W. WAITT.

Subscribed and sworn to before me this 25th day of April, 1949.

[Seal] /s/ VAUGHN E. EVANS,
Notary Public in and for the State of Washington,
residing at Seattle.

AFFIDAVIT OF ROBERT R. MUSSELMAN

United States of America,
Western District of Washington,
Northern Division—ss.

Robert R. Musselman, being first duly sworn, on oath deposes and says:

I, Robert R. Musselman, am a detective with the Seattle Police force on the Felony Detail.

On the 24th of November, 1948, at about 9:00 P.M. I was in an office adjoining Captain Morris' office. The Felony Detail was just preparing to leave the Station. Capt. Morris called in to me and told me to meet him at 12th and Yesler.

When I arrived at 12th and Yesler with Detective Ivy, I met Captain Morris, Detectives Zuarri and Waitt, who had gotten there before me. At Capt. Morris' orders, Waitt and I went with him into an apartment house. The main door was unlocked, which is the usual custom in this area of Seattle until 10:00 P.M. The hallways were lighted and there was no one in sight. We, all three, went up stairs, Capt. Morris in the lead, followed by Detective Waitt, then myself.

At the head of the stairs, Capt. Morris pushed a door open to his left and called out "Is anybody home?" There was no response. Capt. Morris and Waitt went on into the apartment and I followed. Capt. Morris kept calling "Is anybody home?" As Capt. Morris and Waitt started into a room off the dining room, I went on back into the kitchen and

finding no one there, I went into a bathroom, which also leads to the room into which Capt. Morris and Waitt had gone. I entered the bedroom where Capt. Morris and Waitt were, from this bathroom. When I came into the bedroom, Ruis Parker was on the bed with an opium smoking outfit beside him. Capt. Morris was ordering Parker to get dressed as I walked in.

At Capt. Morris' orders, I assisted in searching the premises, where we found: 294 grains of Opium prepared for smoking and 75 grains of Yen Shee.

I had never seen Ruis Parker before or had never heard of him before. I was never told why we were going into the apartment, but was just told to come along.

/s/ ROBERT R. MUSSELMAN.

Subscribed and sworn to before me this 25th day of April, 1949.

[Seal] /s/ VAUGHN E. EVANS,
Notary Public in and for the State of Washington,
residing at Seattle.

AFFIDAVIT OF ANDREW E. ZUARRI

United States of America,
Western District of Washington,
Northern Division—ss.

Andrew E. Zuarri, being first duly sworn, on oath deposes and says:

I, Andrew E. Zuarri, am a Detective with the Felony Detail of the Seattle Police Force.

On November 24, 1948, I was in Captain Morris' office about 9 to 9:30 P.M. The Felony Squad was about to leave the Station when Capt. Morris got a telephone call. I heard none of the conversation, but when he finished the call, he got up and said to his detail "Come on, let's go take a look, a man has been poisoned," or words to that effect. Some one asked where, and Capt. Morris said "Meet me at 12th and Yesler."

I went with Detective Waitt and met Capt. Morris at 12th and Yesler. As we met Capt. Morris, Detectives Ivy and Musselman came up on foot. Capt. Morris ordered Ivy and myself to stay outside, that he would call us if he needed us. Capt. Morris took Waitt and Musselman and went in to the apartment house in front of which we were standing. The door was unlocked, as are most apartment houses in Seattle until about 10 P.M.

A few minutes later, one of our detail called to us from a window to come on up. We went up to the apartment at the head of the stairs. We assisted in the search of the apartment and found:

294 grains of Opium prepared for smoking and 75 grains of Yen Shee.

I talked to Parker while we were making the search. He stated he was glad that this had happened and he hoped he would be sent somewhere to take a cure. He seemed to be glad to have us search his apartment.

/s/ ANDREW E. ZUARRI.

Subscribed and sworn to before me this 25th day of April, 1949.

[Seal] /s/ VAUGHN E. EVANS.

Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed April 26, 1949.

[Title of District Court and Cause.]

AFFIDAVITS OF RUIS PARKER, LOTTIE
MORGAN AND ROBERT D. LEE IN AN-
SWER TO PLAINTIFF'S AFFIDAVITS.

Comes Now the defendant, Ruis Parker, and furnishes herewith affidavits of Ruis Parker, Lottie Morgan and Robert D. Lee, in answer to the affidavits heretofore filed by the plaintiff.

/s/ ALLAN POMEROY,
Attorney for Defendant.

[Endorsed]: Filed April 28, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF RUIS PARKER

State of Washington,
County of King—ss.

Ruis Parker, being first duly sworn on oath, deposes and says: That he is the defendant in the above-entitled action, that he has read the affidavits of Robert W. Morris, Robert W. Waite, Robert R. Musselman and Andrew E. Zuarri heretofore filed herein.

That he states on the night of November 24, 1948, he was in his apartment at 1219½ Yesler Way, Seattle, Washington, where he had been since 10 A.M. that morning, that no one had been in his apartment during the entire day and that he had not been outside of his apartment since that time, that the door to his apartment was locked during the entire day and was locked at the time the officers entered; that there is only one key in existence for this lock of which this affiant has cognizance and that is the key which was in his possession at all times; that regardless of what may be usual in apartment houses, the outside door of this apartment wing is always locked, there being only two apartments inside of this door to the wing.

That when this affiant was awakened by Capt. Morris and the other officers, Capt. Morris exhibited to this affiant his badge and stated he was an officer. That this affiant said, "there it is", meaning the opium and smoking equipment, since this opium

and smoking equipment were in plain sight on the bed. The officers then found some ash or Yen Shee. That Capt. Morris asked this affiant if there was any more opium in the apartment and stated to this affiant that if this affiant would tell him where any other opium was, it would not be necessary to tear up the apartment to look for it. This affiant was then handcuffed and with his hands behind him, led into the front room of the apartment where he was seated, and the officers then proceeded to tear up the apartment looking for more opium. Thereupon Capt. Morris came into the room and told this affiant to get dressed and Capt. Morris said to this affiant, "Is this all the Opium," to which this affiant replied, "Yes," whereupon Capt. Morris said, "It isn't according to the information we have."

Any allegations made by the officers in their affidavits contrary to the facts in this affidavit are hereby denied by this affiant.

Further affiant sayeth not.

/s/ RUIS PARKER.

Subscribed And Sworn To before me this 27th day of April, 1949.

[Seal] /s/ MARIAN M. PARKS,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed April 28, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF LOTTIE MORGAN

State of Washington,
County of King—ss.

Lottie Morgan, being first duly sworn on oath, deposes and says: That she is a tenant in the Lee Apartments, located at 1219½ Yesler Way, Seattle, Washington; that she occupies an apartment beneath the apartment of Ruis Parker; that these two apartments are the only apartments in one wing of said apartment house; that the outside door leading to these two apartments is always locked and has been so locked for more than ten years.

/s/ MISS LOTTIE MORGAN.

Subscribed And Sworn To Before Me this 26th day of April, 1949.

[Seal] /s/ MARIAN M. PARKS,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed April 28, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF ROBERT D. LEE

State of Washington,
County of King—ss.

Robert D. Lee, being first duly sworn on oath, deposes and says: That he is the owner of the Lee Apartments, located at 1219½ Yesler Way, Seattle, Washington, that he has owned the property since 1945, and that the outside door leading to the apartments occupied by Ruis Parker and Lottie Morgan is always kept locked, and has been so locked at all times since he has owned said property.

/s/ ROBERT D. LEE.

Subscribed And Sworn To before me this 26th day of April, 1949.

[Seal] /s/ MARIAN M. PARKS,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed April 28, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF ROBERT W. MORRIS,
HENRY L. GIORDANO AND JOSEPH E.
GOODE.

Comes now the plaintiff United States of America and furnishes herewith affidavits of Robert W. Morris, Henry L. Giordano and Joseph E. Goode in opposition to the Defendant's Motion to Suppress Evidence.

/s/ J. CHARLES DENNIS,
U. S. Attorney.

/s/ VAUGHAN E. EVANS,
Assistant U. S. Attorney.

AFFIDAVIT OF ROBERT MORRIS

United States of America,
Western District of Washington,
Northern Division—ss.

Robert W. Morris, being first duly sworn, on oath deposes and says:

That he has read the affidavit of Ruis Parker dated April 27, 1949.

That on the night of November 24, 1948, the front door of the Apartment House located at 1219½ Yesler Way was unlocked, and the door leading to the apartment occupied by Ruis Parker was not only unlocked, but was open approximately one foot.

That he specifically denies having said "It isn't

according to the information we have” and further specifically denies that any one of the officers who accompanied him made any such statement, or had cause to make any such statement.

That he had never heard of Ruis Parker prior to November 24, 1948, at the time he arrested him.

/s/ ROBERT W. MORRIS.

Subscribed and sworn to before me this 29th day day of April, 1949.

[Seal] /s/ VAUGHN E. EVANS,
Notary Public in and for the State of Washington,
residing at Seattle.

AFFIDAVIT OF HENRY L. GIORDANO
AND JOSEPH E. GOODE

United States of America,
Western District of Washington,
Northern Division—ss.

Henry L. Giordano and Joseph E. Goode both being first duly sworn, upon oath depose and say:

That they are Agents of the Federal Bureau of Narcotics.

That on April 28, 1949, we interviewed Robert D. Lee who executed the affidavit dated April 26, 1949 in support of the motion of Ruis Parker to suppress evidence. That Robert D. Lee stated to us that what he meant by the statement in his affidavit that the door leading to the apartments at 1219½ Yesler Way was “locked at all times,” is that it is customary for that door to be locked.

That Mr. Robert D. Lee further stated that the lock is of the type which has a spring latch that operates by turning a knob from the inside and a key from the outside, that this latch can be held in the unlocked position by pressing a catch on the lock, which would cause the latch to remain in the unlocked position, that there is no automatic closing device on the door but that it must be pulled shut in order to be locked.

That Mr. Robert D. Lee showed us the lock on his door which he stated to be of the same type as on the door at 1219½ Yesler Way. That Mr. Robert D. Lee does not live in the Apartment house at that address, but that he lives at 1635 King Street.

We have checked the records of the office of Justice of the Peace Guy B. Knott, of the City of Seattle, and find that Ruis Parker has been convicted Nine (9) times for the offense of possessing liquor with intent to sell the same, the dates and disposition of the said convictions being listed as follows:

Feb. 2, 1940: Fined \$150.00 and costs and sentenced to 30 days, jail sentence suspended.

Feb. 13, 1940: Fined \$100.00 and costs.

March 21, 1940: Fined \$100.00 and costs.

April 12, 1940: Fined \$100.00 and costs.

April 12, 1940: (two separate cases on this date): Fined \$100.00 and costs.

July 16, 1940: Fined \$150.00 and costs.

Sept. 20, 1940: Fined \$125.00 and costs.

Feb. 25, 1941: Fined \$100.00 and costs.

May 28, 1943: Fined \$250.00 and costs and sentenced to 90 days, jail sentence suspended.

/s/ HENRY L. GIORDANO.

/s/ JOSEPH E. GOODE.

Subscribed and sworn to before me this 28th day of April, 1949.

[Seal] /s/ VAUGHN E. EVANS,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed April 30, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF GEORGE R. MOSLER

State of Washington,
County of King—ss.

George R. Mosler, being first duly sworn on oath, deposes and says: That he is a practicing attorney in the City of Seattle; that he has been familiar with the premises known as 1219½ Yesler Way, Seattle, Washington, since 1930. During that time he or his family have owned said apartments until he sold said apartments to Robert D. Lee in September, 1945.

That during the period from 1930 to September, 1945, the outside door to the apartments located in the wing in which Ruis Parker's apartment is situated, has been customarily locked at all times and the only persons having an authorized key to said door are the two tenants in the said wing and the landlord.

Further Affiant Sayeth Not.

/s/ GEORGE R. MOSLER.

Subscribed And Sworn To before me this 30th day of April, 1949.

[Seal] /s/ MARION M. PARKS,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed May 2, 1949.

[Title of District Court and Cause.]

PRAECIPE FOR SUBPOENA IN A CASE

The Clerk of said Court will issue Subpoena for the following-named persons to appear before said Court, at the United States Court Rooms, 1017 U. S. Court House, Seattle, at 10 o'clock, a. m., on the 5th day of May, 1949, then and there to testify in behalf of the United States.

Robert W. Morris, Detective Captain, Police Dept., Seattle.

Andrew E. Zuarri, Detective, Police Dept., Seattle.

~~Robert W. Waitt, Detective, Police Dept., Seattle.~~

E. F. Ivey, Detective, Police Dept., Seattle.

Robert R. Musselman, Detective, Police Dept., Seattle.

Hugo Ringstrom, Government Chemist, Federal Office Bldg., Seattle.

F. O'Leary, Police Property Clerk, Police Dept., Seattle.

This 4th day of May, 1949.

J. CHARLES DENNIS,
United States Attorney.

[Endorsed]: Filed May 4, 1949.

[Title of District Court and Cause.]

ORDER DENYING MOTION TO SUPPRESS

This matter having come on duly and regularly for hearing upon the motion of the defendant Ruis Parker for an order suppressing evidence, the plaintiff being represented by J. Charles Dennis, United States Attorney for the Western District of Washington, and Vaughn E. Evans, Assistant United States Attorney for said district, and the defendant

being represented by his counsel, Allan Pomeroy, and the Court having considered the pleadings and affidavits herein filed and having heard the arguments of counsel, the Court finds from the evidence that the police officers who seized the narcotics from the home of the defendant Ruis Parker were acting upon an emergency and had no knowledge or suspicion of any violation of the Federal Narcotic Laws nor any reason for securing a search warrant until the narcotics were discovered in the defendant's possession during the course of the police officers' investigation of an emergency; now, therefore, it is hereby

Ordered, Adjudged And Decreed that the motion of the defendant Ruis Parker for an order to suppress evidence be and the same is hereby denied in all respects.

The defendant is allowed an exception to the findings of the Court and the ruling upon the motion herein entered.

Done In Open Court this 6th day of May, 1945.

/s/ JOHN C. BOWEN,
U. S. District Judge.

Presented by:

/s/ VAUGHN E. EVANS,
Asst. U. S. Attorney.

[Endorsed]: Filed May 6, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To Robert W. Waitt, Detective, Police Department,
Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 5th day of May A. D. 1949, at 10 o'clock A. M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this

4th day of May, A. D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 4, 1949, United States Marshal,
Seattle, Wash.

Western District
of Washington—ss.

I hereby certify and return, that on the 4th day of May, 1949, I received the within Subpoena and that after diligent search I am unable to find the within-named defendant Robert W. Waitt within my district.

J. S. DENISE,
United States Marshal.

By /s/ JAMES M. SCHWENFIELD,
Deputy United States
Marshal.

N. B., Waitt is in San Francisco on the Rich case.

[Endorsed]: Filed May 12, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To Robert R. Musselman, Detective, Police Department, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 5th day of May A. D. 1949, at 10 o'clock A. M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this 4th day of May, A. D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,

Clerk.

[Seal] By /s/ WALLACE PETERSON,

Deputy Clerk.

Received May 4, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington, on May 4, 1949, and on May 4, 1949, at Seattle, Washington, I served it on the within-named Robert P. Musselman and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal].By /s/ JAMES M. SCHWENFIELD,
Deputy.

[Endorsed]: Filed May 12, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To Robert W. Morris, Detective Captain, Police Department, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 5th day of May A. D. 1949, at 10 o'clock A. M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this

4th day of May, A. D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 4, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington, on May 4, 1949, and on May 4, 1949, at Seattle, Washington, I served it on the within-named Robert W. Morris and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal] By /s/ JAMES M. SCHWENFIELD,
Deputy.

[Endorsed]: Filed May 12, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To Andrew E. Zuarri, Detective Police Department,
Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 5th day of May A. D. 1949, at 10 o'clock A. M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States. this 4th day of May, A. D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 4, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington, on May 4, 1949, and on May 4, 1949, at Seattle, Washington, I served it on the within-named Andrew E. Zuarri and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,

U. S. Marshal.

[Seal] By /s/ JAMES M. SCHWENFIELD,
Deputy.

[Endorsed]: Filed May 12, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To Hugo Ringstrom, Government Chemist, Federal Office Building, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 5th day of May A. D. 1949, at 10 o'clock A. M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this

4th day of May, A.D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 4, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington, on May 4, 1949, and on May 4, 1949, at Seattle, Washington, I served it on the within-named Hugo Ringstrom and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal] By /s/ JAMES M. SCHWENFIELD,
Deputy.

[Endorsed]: Filed May 12, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To F. O'Leary, Police Property Clerk, Police Department, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and

appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 5th day of May A. D. 1949, at 10 o'clock A. M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this 4th day of May, A. D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 4, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington, on May 4, 1949, and on May 4, 1949, at Seattle, Washington, I served it on the within-named F. O'Leary and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal] By /s/ JAMES M. SCHWENFIELD,
Deputy.

[Endorsed]: Filed May 12, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To Robert W. Waite, 13219-1st Ave., S.W., Seattle,
Wash.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 23rd day of May A. D., 1949, at 11:00 o'clock A. M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this 19th day of May, A. D., 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By JACK W. KOERNER,
Deputy Clerk.

U. S. Marshal's Criminal Docket No. 27885.

Received May 19, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington, on May 19, 1949, and on May 19, 1949, at 13219-1st, S.W., Seattle, Washington, I served it on the within-named.....and left a true copy there or a subpoena ticket with the person named above.

J. S. DENISE,

U. S. Marshal.

[Seal] By /s/ JAMES BRIDGES,
Deputy.

[Endorsed]: Filed May 23, 1949.

[Title of District Court and Cause.]

PRAECIPE FOR SUBPOENA IN A CASE

The Clerk of said Court will issue Subpoena for the following-named persons to appear before said Court, at the United States Court Rooms, 1017 U.S. Court House in Seattle at 10 o'clock, a.m., on the 2d day of August, 1949, then and there to testify in behalf of the United States.

Robert W. Morris, Detective Captain, Police Dept., Seattle.

Andrew E. Zuarri, Detective, Police Dept., Seattle.

Robert W. Waitt, Detective, Police Dept., Seattle.

Robert R. Musselman, Detective, Police Dept., Seattle.

Hugo Ringstrom, Government Chemist, Federal Office Bldg., Seattle.

Frank O'Leary, Police Property Clerk, Police Dept., Seattle.

This 25th day of May, 1949.

J. CHARLES DENNIS,
United States Attorney.

[Endorsed]: Filed May 25, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To: Andrew E. Zuarri, Detective, Police Department, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 2d day of August A.D. 1949, at 10 o'clock A.M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this

26th day of May, A.D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 26, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington on May 26, 1949 and on May 27, 1949 at Seattle, Washington, I served it on the within-named Andrew E. Zuarri and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal] By /s/ JAMES BRIDGES,
Deputy.

[Endorsed]: Filed May 31, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To: Robert W. Morris, Detective Captain, Police
Department, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the

Courthouse, in the city of Seattle, in said district, on the 2d day of August A.D. 1949, at 10 o'clock A.M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this 26th day of May, A.D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 26, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington on May 26, 1949 and on May 27, 1949 at Seattle, Washington, I served it on the within-named Robert W. Morris and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal] By /s/ JAMES BRIDGES,
Deputy.

[Endorsed]: Filed May 31, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To: Robert R. Musselman, Detective, Police Department, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 2d day of August A.D. 1949, at 10 o'clock A.M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this 26th day of May, A.D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 26, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington on May 26, 1949 and on May 27, 1949 at Seattle, Washington, I served it on the within-named Robert R. Musselman and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal] By /s/ JAMES BRIDGES,
Deputy.

[Endorsed]: Filed May 31, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To: Hugo Ringstrom, Government Chemist, Federal
Office Building, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 2d day of August A.D. 1949, at 10 o'clock A.M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge
of said District Court of the United States, this

26th day of May, A.D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

RETURN ON SERVICE

Received this writ at Seattle, Washington on May 26, 1949 and on May 27, 1949 at Seattle, Washington, I served it on the within-named Hugo Ringstrom and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal] By /s/ JAMES BRIDGES,
Deputy.

Received May 26, 1949, United States Marshal,
Seattle, Wash.

[Endorsed]: Filed May 31, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To: Frank O'Leary, Police Property Clerk, Police
Department, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the

Courthouse, in the city of Seattle, in said district, on the 2d day of August A.D. 1949, at 10 o'clock A.M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen Judge of said District Court of the United States, this 26th day of May, A.D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 26, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington on May 26, 1949 and on May 27, 1949 at Seattle, Washington, I served it on the within-named Frank O'Leary and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal] By /s/ JAMES BRIDGES,
Deputy.

[Endorsed]: Filed May 31, 1949.

[Title of District Court and Cause.]

UNITED STATES SUBPENA

To: Robert W. Waitt, Detective, Police Department, Seattle, Washington.

You Are Hereby Commanded that laying aside all and singular your business and excuses, you be and appear in the District Court of the United States for the Western District of Washington, at the Courthouse, in the city of Seattle, in said district, on the 2d day of August A.D. 1949, at 10 o'clock A.M. of said day, then and there to testify and give evidence on behalf of the United States, and not to depart the Court without leave thereof, or of the United States Attorney.

Witness, the Honorable John C. Bowen, Judge of said District Court of the United States, this 26th day of May, A.D. 1949, and in the 173rd year of the Independence of the United States of America.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ WALLACE PETERSON,
Deputy Clerk.

Received May 26, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington on May 26, 1949 and on May 27, 1949 at Seattle, Washington, I served it on the within-named Robert W.

Waitt and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

[Seal] By /s/ JAMES BRIDGES,
Deputy.

[Endorsed]: Filed May 31, 1949.

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the Above-Entitled Court:

You will please subpoena Lottie Morgan, 1219½ Yesley, Apt. A., Seattle; Robert D. Lee, 1635 King, Seattle; William Hawker, 109 12th Ave., Seattle for 2 p.m., Aug. 3, 1949.

/s/ ALLAN POMEROY,
Attorney for Defendant.

[Endorsed]: Filed Aug. 2, 1949.

[Title of District Court and Cause.]

WAIVER OF JURY TRIAL

Comes now the defendant, Ruis Parker, and waives the right to a jury trial and requests the Court to try his case without a jury.

/s/ RUIS PARKER,
Defendant.

/s/ ALLAN POMEROY,
Attorney for Defendant.

Approved and consented to by:

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN F. DORE,
Assistant United States
Attorney.

The foregoing waiver of Jury Trial is hereby approved by the above-entitled court.

/s/ JOHN C. BOWEN,
Judge.

[Endorsed]: Filed Aug. 4, 1949.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes Now the defendant, by his attorney, and most respectfully moves this honorable Court to grant a new trial for the following reasons:

1. The judgment of the Court was contrary to law.
2. The Court erred in admitting into evidence government exhibits 1, 2 and 3.
3. The Court erred in denying the defendant's petition and motion to suppress evidence.
4. For such other and further reasons as will be called to the attention of the Court upon a hearing of this motion.

/s/ ALLAN POMEROY,
Attorney for Defendant.

[Endorsed]: Filed Aug. 8, 1949.

[Title of District Court and Cause.]

DEFENDANT SUBPOENA IN A CRIMINAL
CASE

To William Hawker, 109 12th Ave., Seattle,
Washington.

You Are Hereby Commanded to appear before the Hon. John C. Bowen, Court Room No. 1, in the District Court of the United States for the Western District of Washington, Northern Division at the United States Court House, 5th Ave., and Spring Street, in the city of Seattle, in said District, on the 4th day of August, A.D. 1949, at 10:00 o'clock a.m. of said day, then and there to testify on behalf of the Defendant Ruis Parker in the above-entitled cause.

Witness, the Honorable John C. Bowen, Judge of the District Court of the United States for the Western District of Washington, and the seal thereof, this 2nd day of August, A.D., 1949.

MILLARD P. THOMAS,
Clerk.

[Seal] /s/ JACK W. KOERNER,
Deputy Clerk.

Received Aug. 2, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington, on August 2, 1949 and on August 2, 1949 at Seattle, Washington, I served it on the within-named William Hawker and left a true copy thereof or a subpena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

By /s/ ARLENE B. WARD,
Deputy.

[Endorsed]: Filed Aug. 10, 1949.

[Title of District Court and Cause.]

DEFENDANT SUBPOENA IN A CRIMINAL
CASE

To Lottie Morgan, 1219½ Yesler, Apt. A, Seattle,
Washington.

You Are Hereby Commanded to appear before
the Hon. John C. Bowen, Court Room No. 1, in the
District Court of the United States for the West-
ern District of Washington, Northern Division at
the United States Court House, 5th Ave., and
Spring Street, in the city of Seattle, in said Dis-
trict, on the 4th day of August, A.D. 1949, at 10:00
o'clock a.m. of said day, then and there to testify
on behalf of the Defendant Ruis Parker in the
above-entitled cause.

Witness, the Honorable John C. Bowen, Judge of
the District Court of the United States for the
Western District of Washington, and the seal
thereof, this 2nd day of August, A.D. 1949.

MILLARD P. THOMAS,
Clerk.

[Seal] /s/ JACK W. KOERNER,
Deputy Clerk.

Received Aug. 2, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washington, on August 2, 1949 and on August 2, 1949 at Seattle, Washington, I served it on the within-named Lottie Morgan and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,

U. S. Marshal.

By /s/ EDWARD C. SEALLY,

Deputy.

[Endorsed]: Filed Aug. 10, 1949.

[Title of District Court and Cause.]

DEFENDANT SUBPOENA IN A CRIMINAL
CASE

To Robert D. Lee, 1635 King, Seattle, Washington.

You Are Hereby Commanded to appear before the Hon. John C. Bowen, Court Room No. 1, in the District Court of the United States for the Western District of Washington, Northern Division at the United States Court House, 5th Ave., and Spring Street, in the city of Seattle, in said District, on the 4th day of August, A.D. 1949, at 10:00 o'clock a.m. of said day, then and there to testify on behalf of the Defendant Ruis Parker in the above-entitled cause.

Witness, the Honorable John C. Bowen, Judge of the District Court of the United States for the

Western District of Washington, and the seal thereof, this 2nd day of August, A.D. 1949.

MILLARD P. THOMAS,
Clerk.

[Seal] /s/ JACK W. KOERNER,
Deputy Clerk.

Received Aug. 2, 1949, United States Marshal,
Seattle, Wash.

RETURN ON SERVICE

Received this writ at Seattle, Washnigton, on August 2, 1949 and on August 2, 1949 at Seattle, Washington, I served it on the within-named Robert D. Lee and left a true copy thereof or a subpoena ticket with the person named above.

J. S. DENISE,
U. S. Marshal.

By /s/ EDWARD C. SEALLY,
Deputy.

[Endorsed]: Filed Aug. 10, 1949.

United States District Court, Western District of
Washington, Northern Division

No. 47756

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RUIS PARKER,
Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On this 12th day of August, 1949, the attorney for the Government and the defendant Ruis Parker, appearing in person, the defendant being represented by Allan Pomeroy, his attorney, the Court finds the following:

That prior to entering his plea, a copy of the indictment was given the defendant, and that the defendant entered a plea of Not Guilty and a trial was held before the Court without a jury, the defendant having waived a jury trial in writing, with the approval of the Court and consent of the Government, the trial resulting in a decision by the Court that the defendant is Guilty as to Count I of the Indictment; that by order of this Court the presentence investigation was dispensed with; Now, therefore,

It Is Adjudged that the defendant has been convicted by a decision of the Court of the offense of violation of Section 174, Title 21, U.S.C., as charged in Count I of the indictment, there being only one count in the indictment herein; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged in Count I of the indictment, and is convicted.

It Is Adjudged and Ordered that the defendant be committed to the custody of the Attorney General of the United States for confinement in the Federal Prison Camp, McNeil Island, Washington, or such other like institution as the Attorney General of the United States or his authorized representative may by law designate for the period of Ten (10) Months on Count I of the indictment, and further, that defendant pay a fine in the sum of One (\$1.00) Dollar, and shall stand committed until such fine is paid.

It Is Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in Open Court this 12th day of August, 1949.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented by:

/s/ JOHN F. DORE,

Asst. U. S. Attorney.

Violation of Section 174, Title 21, U.S.C.

(Narcotic Drugs Import & Export Act, Possession of Opium prepared for smoking and Yen Shee.)

Filed and Entered: Aug. 12, 1949.

[Endorsed]: Filed and Entered: Aug. 12, 1949.

[Title of District Court and Cause.]

BAIL BOND ON APPEAL

Know All Men by These Presents:

That we, Ruis Parker, as principal, and United Pacific Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, as surety, are held and firmly bound unto the United States Government in the penal sum of One Thousand Dollars (\$1000) for the payment of which sum, well and truly to be made, we bind and obligate ourselves and each of us, our heirs, executors and administrators, jointly and severally firmly by these presents.

Signed and sealed this 12th day of August, 1949.

The condition of the foregoing obligation is such that whereas the above-named principal was convicted under Count I of Section 174—Title 21 U.S.C. Narcotics, on the 4th day of August, 1949, and thereafter filed a motion for a new trial, which matter came on for hearing thereafter and was by the Court overruled, and thereafter was sentenced on Friday, August 12th, 1949, to serve Ten Months in the United States Road Camp at McNeil Island and pay a fine of One Dollar.

Now, if the said Ruis Parker shall well and truly make his personal appearance before the United States District Court, for the Western District of Washington, Northern Division, until discharge by due course of the law, then and there to answer the charge and accusation against him, this obligation

shall become void, otherwise to remain in full force,
virtue and effect.

/s/ RUIS PARKER,

Principal.

UNITED PACIFIC INSUR-
ANCE COMPANY

[Seal] By /s/ B. REFSLAND,

Attorney-in-Fact.

The foregoing bond approved on this 12th day
of August, 1949.

/s/ JOHN C. BOWEN,

Judge.

Approved as to Form:

/s/ JOHN F. DORE,

U. S. District Attorney.

Bond approved:

/s/ J. CHARLES DENNIS,

U. S. Attorney.

[Endorsed]: Filed Aug. 12, 1949.

Mr. Paul P. O'Brien August 20, 1949.
Clerk, U. S. Court of Appeals
P. O. Box #547
San Francisco, California

Re USA vs. Ruis Parker

Criminal No. 47756

Dear Mr. O'Brien:

Pursuant to Rule 37(1) of the Federal Rules of
Criminal Procedure, we are forwarding the usual

Statement of Docket Entries together with duplicate Notice of Appeal in the above-entitled cause.

Yours very truly,

MILLARD P. THOMAS,
Clerk.

308 U S Court House

Hon. J. Charles Dennis, August 19, 1949.
United States Attorney
1017 U. S. Court House
Seattle 4, Washington

Dear Mr. Dennis:

Please find enclosed herewith pursuant to Rule 37 (a)(1) as amended, of the Criminal Rules of Procedure, one copy of a Notice of Appeal filed today in Cause No. 47756, U. S. vs. Ruis Parker.

Yours very truly,

MILLARD P. THOMAS,
Clerk.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant: Ruis Parker,
1219½ Yesler Way, Apt. B, Seattle, Wash.

Name and address of Appellant's attorney: Allan
Pomeroy, 304 Spring Street, Seattle, Wash.

Offense: Violation of Section 174, Title 21, U.S.C.
Judgment and Sentence:

There being only 1 count, Appellant was sentenced to the Federal Prison Camp, McNeil Island, Washington, for a period of ten months and to pay a fine of \$1.00 and stand committed until said fine was paid.

The Appellant is now on bail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the above-stated judgment on the grounds set forth below.

/s/ RUIS PARKER,

Appellant.

/s/ ALLAN POMEROY,

Attorney for Appellant.

Dated: August 18, 1949.

Grounds of Appeal

1. The Court erred in denying defendant's petition to suppress.
2. The Court erred in denying defendant's motion to dismiss.

[Endorsed]: Filed Aug. 19, 1949.

[Title of District Court and Cause.]

Seattle, Washington, August 4, 1949

Before: Honorable John C. Bowen,
District Judge.

EXCERPTS OF TESTIMONY

CAPTAIN ROBERT W. MORRIS

called as a witness by and on behalf of the plain-

tiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

* * *

By Mr. Dore:

Q. What did you do as you went into the room?

A. Well, I called out "is anybody home?" Nobody answered. I called out three or four times when I walked through the living room. I walked into the living room and then into the dining room. I called out, "Anybody home?" And nobody answered and then I went ahead.

Q. What did you see?

A. When I got into the dining room, on the left there was a door that was shut. So I went over and opened that door. I called out, "Is anybody home?" And then I saw the defendant lying there on a bed unconscious,—or his eyes were shut, anyway.

* * *

ROBERT W. WAITT

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

* * *

By Mr. Dore:

Q. And then what happened after you got into the apartment?

A. We entered into what was apparently a living room. It was a pretty good size room. And then we walked straight on back towards the dining room and he called out again, "Is there anybody home?"—or "Is there anybody here," or words to that effect. He got back into the dining room and there was a door—there was a door to our left—and he opened that door and I went in there with him.

Q. And what was in there?

A. There was a bedroom.

Q. And what did you see in there?

A. There was a small light on over a nightstand that was sitting by the head of the bed and there was a man laying on the bed.

Q. Do you see that man in court today?

A. Yes.

Q. Can you point him out?

A. He is the defendant in the case (indicating).

United States District Court, Western District
of Washington, Northern Division

No. 47756

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUIS PARKER,

Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On this 12th day of August, 1949, the attorney

for the Government and the defendant Ruis Parker appearing in person, the defendant being represented by Allan Pomeroy, his attorney, the Court finds the following:

That prior to entering his plea, a copy of the indictment was given the defendant, and that the defendant entered a plea of Not Guilty and a trial was held before the Court without a jury, the defendant having waived a jury trial in writing, with the approval of the Court and consent of the Government, the trial resulting in a decision by the Court that the defendant is Guilty as to Count I of the Indictment; that by order of this Court the presentence investigation was dispensed with; Now, therefore,

It Is Adjudged that the defendant has been convicted by a decision of the Court of the offense of violation of Section 174, Title 21, U.S.C., as charged in Count I of the indictment, there being only one count in the indictment herein; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It Is Adjudged that the defendant is guilty as charged in Count I of the indictment, and is convicted.

It Is Adjudged and Ordered that the defendant be committed to the custody of the Attorney General of the United States for confinement in the Federal Prison Camp, McNeil Island, Washing-

ton, or such other like institution as the Attorney General of the United States or his authorized representative may by law designate for the period of Ten (10) Months on Count I of the indictment, and further, that defendant pay a fine in the sum of One (\$1.00) Dollar, and shall stand committed until such fine is paid.

It Is Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in Open Court this 12th day of August, 1949.

JOHN C. BOWEN,
U. S. District Judge.

Presented by:

JOHN F. DORE,
Asst. U. S. Attorney.

Violation of Section 174, Title 21, U.S.C.

(Narcotic Drugs Import & Export Act, Possession of Opium prepared for smoking and Yen Shee.)

Office of the Clerk, U.S. Court of Appeals
For the Ninth Circuit, San Francisco 1, Calif.

Millard P. Thomas, Esq., August 22, 1949
Clerk, United States
District Court,
308 U.S. Court House,
Seattle (4) Wash.

Undocketed.
Parker vs. U.S.A.

Dear Sir:

I have your favor dated the 20th instant, enclosing duplicate notice of appeal and statement of docket entries in above cause.

Sincerely,

/s/ PAUL P. O'BRIEN,
Clerk.

O'B:W

cc-Allan Pomeroy;

J. Charles Dennis.

[Title of District Court and Cause.]

AFFIDAVIT OF ALLAN POMEROY IN SUP-
PORT OF MOTION TO EXTEND TIME
FOR FILING RECORD ON APPEAL

State of Washington,
County of King—ss.

Allan Pomeroy, being first duly sworn on oath,
deposes and says:

That he is the attorney for the defendant in the

above cause. Notice of appeal was filed August 18, 1949. Promptly thereafter affiant attempted to reach the court reporter who reported the testimony at the trial of this cause, but he was then on vacation and affiant did not hear from him until early September, at which time he informed affiant that it would be impossible for him to prepare a transcript of the testimony and proceedings at the trial within the forty days after filing of Notice of Appeal and that the earliest date on which he could hope to prepare such a transcript would be the latter part of September, 1949.

Affiant believes that approximately three weeks will be necessary after receipt of the transcript of testimony in order to prepare and transmit to the Circuit Court of Appeals the record on appeal. Since affiant has no guarantee that the transcript of testimony will actually be received the latter part of September, affiant believes that it is reasonably necessary that the time be extended to November 30, 1949.

/s/ ALLAN POMEROY.

Subscribed and Sworn to before me this 19th day of September, 1949.

[Seal] /s/ JOHN E. BELCHER,

Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Sept. 20, 1949.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR
FILING RECORD ON APPEAL

On motion of defendant, and the Court having considered the affidavit of Allan Pomeroy in support of the Motion,

It Is Hereby Ordered that the time for filing the record on appeal in this cause in the Circuit Court of Appeals for the Ninth Circuit be, and it hereby is, extended to November 10, 1949.

Done in Open Court this 20th day of September, 1949.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ ALLAN POMEROY,
Attorney for Defendant.

OK as to form:

/s/ J. CHARLES DENNIS,
U. S. Attorney.

By /s/ JOHN F. DORE,
Asst. U. S. Attorney,
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 20, 1949.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the Above Named Court:

In making up the transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, you will please include all original papers filed therein, together with this designation of record.

Filed this 31st day of October, 1949.

ALLAN POMEROY and

ERNEST R. CLUCK,

Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed Nov. 1, 1949.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto through their respective counsel that the following exhibits be omitted from the original record on appeal: Plaintiff's Exhibits 1, opium set; 2, jars and tin; and 3, envelope, and that the following exhibit be included in the original record on appeal and be forwarded by the Clerk of this Court to the United States Court of Appeals for the Ninth Circuit, pursuant to Rule 39 (b) (1) and Rule 75 (o) of the Federal Rules of Civil Procedure and Rule 11 of the United States

Court of Appeals: Defendant's Exhibit A-2, Chart showing street locations.

Dated at Seattle, Washington, this 3rd day of November, 1949.

J. CHARLES DENNIS,
U. S. Attorney,
VAUGHN E. EVANS,
Asst. U. S. Attorney,
ALLAN POMEROY and
ERNEST R. CLUCK,
Attorneys for Defendant.

[Endorsed]: Filed Nov. 3, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Sub-division I of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 39(b)(1) of the Federal Rules of Criminal Procedure, I am transmitting herewith as the record on appeal in the above-entitled cause, all of the original pleadings on file and of record in said cause in my office at Seattle, as set forth

below, and that said pleadings, together with the Plaintiff's Exhibits numbered 1, 2, and 3, and Defendant's Exhibit numbered A-2, constitute the record on appeal from the Judgment filed and entered August 12, 1949, to the United States Court of Appeals at San Francisco, California, to wit:

1. Indictment.
2. Court Reporter's Transcript of Arraignment and Plea.
3. Motion to Suppress Evidence.
4. Petition in Support of Motion to Suppress.
5. Affidavits of Robert W. Morris, Robert W. Waitt, Robert R. Musselman and Andrew E. Zuarri.
6. Affidavits of Ruis Parker, Lottie Morgan and Robert D. Lee, in answer to Plaintiff's Affidavits.
7. Affidavits of Robert W. Morris, Henry L. Giordano and Joseph E. Goode, in opposition of Defendant's Motion to Suppress Evidence.
8. Affidavit of George R. Mosler.
9. Praecipe, Government, for Subpoena, Robert W. Morris and five.
10. Order Denying Motion to Suppress Evidence.
11. Marshal's return on Subpoena (Robert W. Waitt—not found).
12. Marshal's return on Subpoena, Robert R. Musselman and four.

13. Marshal's return on Subpoena (Robert W. Waitt).

14. Praeipe for Subpoena, Robert W. Morris and five.

15. Marshal's return on Subpoena, Andrew E. Zuarri and five.

16. Defendant's Praeipe for Subpoena, Lottie Morgan and two.

17. Waiver of Jury Trial.

18. Defendant's Motion for New Trial.

19. Marshal's return on Subpoena, William Hawker and two.

20. Judgment, Sentence and Commitment.

21. Bond, Defendant, \$1000—U.P.I. Co.

22. Notice of Appeal.

22a. Court Reporter's Transcript of Excerpts of Testimony (Robert W. Morris and Robert W. Waitt).

23. Affidavit of Allan Pomeroy in Support of Motion to Extend Time for Filing Record on Appeal.

24. Order extending time for Filing Record on Appeal to November 10, 1949.

25. Court Reporter's original Transcript of Testimony and Proceedings at Trial.

26. Designation of Record on Appeal.

27. Stipulation directing Clerk not to Transmit certain original exhibits to Court of Appeals.

Plaintiff's Exhibits numbered 1, 2, and 3 are not forwarded with this Record on Appeal, pursuant to Stipulation of Counsel.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 4th day of November, 1949.

MILLARD P. THOMAS,

Clerk,

[Seal] By /s/ TRUMAN EGGER,

Chief Deputy.

In the District Court of the United States for the
Western District of Washington,
Northern Division

No. 47756

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUIS PARKER,

Defendant.

PROCEEDINGS

Be It Remembered, that on the 4th day of August, 1949, at the hour of 10:15 a.m., the above entitled and numbered cause came on for trial before the Honorable John C. Bowen, District Judge, in the City of Seattle, County of King, State of Washington; the plaintiff appearing by its attorney, John

F. Dore, Esq., and the defendant appearing by his attorney, Allan Pomeroy, Esq.

Both sides having announced they were ready for trial, and having agreed to waiver of jury trial, the following proceedings were had and testimony given, to-wit: [2*]

The Court: May I ask if counsel and the parties are ready to proceed with the trial of the case of the United States of America versus Ruis Parker, Defendant?

Mr. Pomeroy: The defendant is ready, Your Honor.

Mr. Dore: The government is ready, Your Honor.

The Court: The plaintiff may now proceed.

Mr. Dore: The plaintiff will call as its first witness Robert W. Morris.

The Court: Come forward and be sworn.

Mr. Pomeroy: At this time, if Your Honor please, I wish the court record to show that the defendant renews his motion to suppress evidence in this case, which was previously denied by the Court, such motion to be of record in this particular proceedings from the beginning to the end. Another thing I am asking for is the exclusion of all witnesses during the trial of this case.

The Court: The motion to suppress is denied. What has the government to say, if anything, regarding the request for exclusion of witnesses?

Mr. Dore: The government has no objection, Your Honor, to the exclusion of witnesses.

* Page numbering appearing at bottom of page of original Reporter's Transcript.

The Court: Is there any exception which the government wishes made as to any witness whom possibly the defendant has no objection to, that such witness [3] remain in attendance?

Mr. Dore: No, Your Honor; I do not think the government will request any?

The Court: All witnesses in this case, except the one who is now before the Court for the purpose of being sworn, will kindly retire to the waiting room and await your further call to the witness stand—all the witnesses, both those for the plaintiff and those for the defendant.

The witness Morris will now be sworn.

ROBERT W. MORRIS

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. Would you state your full name, please?

A. Robert W. Morris.

Q. How do you spell your last name?

A. M-o-r-r-i-s.

Q. Where do you live?

A. 3630 Magnolia Boulevard.

Q. And what is your business or occupation?

A. Captain of the Seattle Police Department.

(Testimony of Robert W. Morris.)

Q. How long have you been with the Seattle Police Department? [4] A. 17 years.

Q. And with what detail are you now connected?

A. Felony squad, and the supervising captain of the night shift, detective division.

Q. Were you so employed by the Seattle Police Department on or about November the 24th, 1948?

A. I was.

Q. And were you on duty as a police officer on that date? A. I was.

Q. In what capacity at that time?

A. Well, it was as supervising captain of the night shift and captain of the felony squad.

Q. And speaking of the night shift, what do you mean by that?

A. Well, it takes everything in, the Detective Division, the Homicide Division—robbery.

Q. Between what hours?

A. Eight o'clock in the evening to four in the morning.

Q. You received an anonymous—did you receive an anonymous telephone call on the 24th of November?

Mr. Pomeroy: I object to that as leading, if Your Honor please.

The Court: Try and avoid leading.

Mr. Dore: Yes, Your Honor. [5]

The Court: Ask him what, if anything, he did.

Q. (By Mr. Dore): While you were on duty

(Testimony of Robert W. Morris.)

that evening, November 24th, did you receive a telephone call? A. I did.

Q. And what was the nature of that call?

A. I received a call from somebody on the phone, and they said that I better get up to this address which I believe is 1219½ Yesler, Apartment B, that a man up there looked like he was poisoned and in bad shape and somebody better get up there in a hurry. I tried to find out who the man was or where he was. He wouldn't tell me. He said, "You get up here and I will be here."

Q. About what time of evening was this?

A. About 9:30.

Q. Did you at that time endeavor to ascertain the identification of the caller?

A. Yes. I tried to talk around and find out who it was. The fellow wouldn't say who he was.

Q. Did you recognize the voice at all, Captain?

A. I did not.

Q. Now, who was present at the time you received the telephone call?

A. The witnesses in this case were all present, Zuarri, Waitt, Musselman, and Ivy. That was all.

Q. Are they all police officers on your shift? [6]

A. They are.

Q. Now, what did you do in response to the call?

A. We were just getting ready to go out the door on another case. We were just getting ready to leave when I got the call, so I told them to come up and meet me at 12th and Yesler.

(Testimony of Robert W. Morris.)

Q. Whom did you tell that to?

A. Everybody there. We were going on something else and I didn't have time to finish whatever I was talking about. I said to come up to about 12th and Jackson. From there we were going out on this other case.

Q. What did you think or believe at that time concerning this call?

Mr. Pomeroy: I object to that, if Your Honor please, what he thought or believed. It has nothing to do with this case.

The Court: I am not aware at the moment of what right you would have to produce testimony as to what was in one's mind.

Mr. Dore: Well, as to an offer of proof, Your Honor, I ask this question in the way of showing the state of mind of the police officer; what was his belief at the time he was proceeding to the residence of this defendant.

The Court: You mean with respect to the question [7] of probable cause?

Mr. Dore: Yes, Your Honor.

The Court: Well, I believe that it ought to be framed in a different way. You could limit the inquiry to certain aspects, that is, as to the question of probable cause, or as to there being committed any offense, and so forth—what effect did this have upon you, or something to limit it to a specific inquiry.

(Testimony of Robert W. Morris.)

Q. (By Mr. Dore): Did you at that time believe that a crime had been committed at that address?

A. I believed that somebody was in bad shape, that they were sick and needed some police help or assistance. I asked the fellow: "What was the——"

Mr. Pomeroy: I will object to this, if Your Honor please?

Q. What do you mean by "in bad shape"?

Mr. Pomeroy: Just a minute. I am making an objection. It is hearsay.

A. The fellow said——

The Court: Just a moment.

Objection sustained.

Q. (By Mr. Dore): Captain, you stated prior to the objection that you thought the man was in bad shape. What do you mean by "bad shape"?

Mr. Pomeroy: I object to that, if Your Honor please, as not being pertinent to the issues of this case, the state of his mind.

Mr. Dore: Your Honor, I submit that he can explain the phrase.

The Court: The objection is overruled. You may state what you mean by "bad shape."

A. The man said——

The Court: You cannot state what the man said. What did you mean? What did you mean just now by using the words "bad shape"?

The Witness: I thought he was dying or poisoned.

(Testimony of Robert W. Morris.)

Q. (By Mr. Dore): Now, when did you arrive at 1219½ Yesler, Captain?

A. I drove up there immediately. I got there in two or three minutes.

Q. Two or three minutes. And what time approximately did you leave the police station?

A. 9:30.

Q. Now, who was with you?

A. I went up in the car by myself. The other fellows went up in their cars.

Q. And who did you meet at 12th and Yesler?

A. Zuarri, Waitt, Musselman and Ivy.

Q. And what did you do after the meeting with them? [9]

A. Well, I told two of them to go with me. I told Waitt and Musselman to come with me and the others to stay outside. I told them that until we found out what it was all about so we didn't look like a bunch of policemen climbing up the stairs.

Q. What did you then do?

A. I took Musselman and Waitt and went upstairs. I thought there would be a man at the door. There was nobody there, so I went ahead and entered the door.

Q. Now, you say you entered the door. Would you describe to the Court briefly the general physical layout of the apartment or residence?

A. It is a 2-story building, apartment, duplex, something like that, and down at the left hand corner

(Testimony of Robert W. Morris.)

at the front there is a door. You go in there. And then we went to the second floor where there is a door to Apartment B.

Q. Now, you say you went in the door. Do you mean by that you went in the door on the first floor?

A. That is right.

Q. Was that door open or closed?

A. It was closed, but not locked.

Q. Now, what did you do after you entered the doorway there?

A. I didn't see anybody, so I walked upstairs.

Q. And what did you do after going upstairs?

A. Well, when I got to the top of the stairway, I saw a door open there. This door was open,—oh, about eight inches or a foot, so I went in the room.

Q. What did you do as you went into the room?

A. Well, I called out, "Is anybody home?" Nobody answered. I called out three or four times when I walked through the living room. I walked into the living room and then into the dining room. I called out, "Anybody home?" And nobody answered and then I went ahead.

Q. What did you see?

A. When I got into the dining room, on the left there was a door that was shut. So I went over and opened that door. I called out, "Is anybody home?" And then I saw the defendant lying there on a bed unconscious,—or his eyes were shut, anyway.

Q. And what else did you see and hear at that time, or do?

(Testimony of Robert W. Morris.)

A. Well, I looked at him and he opened his eyes. I said, "What seems to be the trouble?" And he opened his eyes and smiled at me and said, "There it is." I said, "There what is?" He said, "There it is." I said, "There what is?" The light—there was a weak light in the room, and there was a dark red bedspread on the bed, and at first I couldn't see well. Then I could see down there and there was an opium layout. When I [11] looked down there, I said, "By golly, it is opium."

I told him I was Captain Morris. He said, "Yes, I know." I said, "You are under arrest. Get your clothes on." We took him out in the other room and handcuffed him.

Q. Now, in regard to the man you saw on the bed, do you see him in court here today?

A. It is the defendant, Ruis Parker.

Q. Seated next to Mr. Pomeroy?

A. Yes, sir.

Q. Are you positive of that identification?

A. Yes, sir.

Q. Now, after you placed him under arrest, where did you take him?

A. I sat him out in the front room.

Q. And then what happened?

A. I called the other fellows—I don't remember whether I called them or sent somebody else out. I think I yelled out the window. I told the other fellows to come up and search the apartment.

Q. Now, when you speak of the apartment, could

(Testimony of Robert W. Morris.)

you describe to the Court the layout of the apartment, the number of rooms to the apartment?

A. There is a front room, a dining room and a kitchen. As you go into the dining room, to your left there is [12] a bedroom, and then you go through that bedroom into a bathroom. The bathroom also goes around in a circle back into the kitchen.

Q. And that is all part of one apartment, is it?

A. That is the top floor of that building.

Q. Does it have a number or letter designating it?

A. It is Apartment B. I don't know whether it is on the door or not.

Q. Now, you say that you took him into the other room. When you took him in the other room and he was seated there, what did you do after that?

A. I talked to him a little bit while the fellows were looking around the place.

Q. What did he have to say to you at that time?

A. Well, I asked him—I just talked along. It was a very pleasant conversation. He was a little woozy. I asked him if he wanted us to help him. He said, "No." I asked him if he had any more opium around the place. He said, "No; that is all," that was right there on the bed. I asked him—I knew—after he told me who he was, his name, why, I knew I had heard of him before.

Q. Yes. And did you do anything other than just talk to him while the others searched the apartment?

(Testimony of Robert W. Morris.)

A. Oh, I think once I looked around there. I checked [13] over the stuff they found on the little plate, and then I think I looked around the dining room myself one time. We were there about 20 minutes, or something like that.

Mr. Dore: Your Honor, may I have this marked Plaintiff's Exhibit 1 for identification, please? It consists of a plate and some other items.

(Items referred to marked Plaintiff's Exhibit 1 for identification.)

Q. (By Mr. Dore): Before you there, Captain, is placed Plaintiff's Exhibit 1 for identification. Can you identify any of those objects?

A. This is the collection of objects that were laying on the bed alongside of Mr. Parker.

Q. And would you enumerate of what they consist? If you know.

A. This is a home-made opium pipe with, evidently, some black residue, Yen Shee, in the bottle. That is the way they make them. There are the jars the opium comes in. There were seven or eight empty jars there, but there are only two of them here.

Here is the knife. This is what they call a yen hok, or something.

Q. That needle like object?

A. Yes. They take the opium out of the jar with this [14] and cook it over the flame and then shove it over this little hole in the bottle.

(Testimony of Robert W. Morris.)

This is a vasoline jar that he had olive oil in, or something to make a little flame to cook the opium with.

Q. Are there any other objects there?

A. Here are scissors and a piece of cotton.

Q. How about the plate, Captain?

A. The plate was laying there on the bed. Here is—this was over the lamp like this. (Referring to a small lamp shade.)

Q. What is that made of, Captain?

A. This is made of cardboard. You can't see the flame. Probably that is why I couldn't see the flame. You put oil in here and light this string and then they put this over it.

Q. It is in the nature of a shade, is it?

A. It is to keep the flame from probably going all over,—concentrate the flame.

Q. Now, all of those items you identified there, were they present in the bedroom next to the defendant when you saw them? A. They were.

Q. Was there any aroma of opium in the room?

A. Well, I don't smell the stuff very good. I could [15] smell it after I saw it, but I didn't smell it ahead of time.

Q. And what was the condition of the pipe when you found it as to warmth or coldness?

A. The flame was burning at the time when he showed it to me, and I think the pipe was laying on the plate. I don't know. It was right there some place.

(Testimony of Robert W. Morris.)

Q. Now what was his physical condition at the time? A. Groggy.

Q. Did you find anything else in the apartment, you, personally?

A. Just some bottles of opium and stuff. There was a bottle of opium lying there on the bed. I don't see it here.

Mr. Dore: Your Honor, may I have this marked Plaintiff's Exhibit 2 for identification? It consists of six jars and one small tin.

(Objects referred to marked Plaintiff's Exhibit No. 2 for identification.)

Q. (By Mr. Dore): The bailiff has placed before you there Plaintiff's Exhibit 2 for identification. Can you identify any of those objects, Captain?

A. Here is the bottle of opium that was laying on the bed alongside. He said he paid \$100 for it. My [16] initials are scratched on the top of this one here. (Indicating.)

Q. What are your initials?

A. R. W. M., — 11-24-48. This — I didn't find these other bottles. They were laying around in the cupboard and in the bedroom.

The Court (Addressing the witness): Put the same lid back on each one you take off.

(Witness complies.)

Q. (By Mr. Dore): Can you identify any of the other jars or the tin?

(Testimony of Robert W. Morris.)

A. I didn't find these other jars and I don't see my initials on them.

Q. Can you identify the tin, Captain?

A. I don't know where this was found. I don't remember now. I don't see any initials on it, either.

Q. What was done with the equipment and material in Plaintiff's Exhibit 1 for identification?

A. I took all this in the front room and I sat it there on a stand while I was talking to Parker, and as the fellows found these other things they would bring it in and I would mark it.

Q. And what happened to it after that?

A. I gave it to Detective Zuarri and Musselman and they took it down to the police station and turned it [17] in to the property room.

Q. Now, as to Plaintiff's Exhibit 2, concerning the items there of which you have spoken, what occurred to them after they had been gathered together? If you know.

A. Zuarri and Musselman took everything in a sack and took it down to the property room and put them all in together. They were all turned in together,—everything.

Mr. Pomeroy: May I ask this question: Do you know that they turned them in to the property room?

The Witness: I sent them downstairs with it.

Mr. Pomeroy: Well, I move it be stricken due to the fact he had no way of knowing whether they were turned in to the property room.

(Testimony of Robert W. Morris.)

Mr. Dore: I have no further questions, Your Honor.

The Court: Well, have you anything to say in opposition to the request that it be stricken, that answer objected to?

Mr. Dore: No. I agree that it should be stricken.

The Court: The answer is stricken. The Court will disregard it, as to the officers turning it into the property room.

Mr. Dore: Yes, Your Honor.

The Court: You may cross-examine. [18]

Cross-Examination

By Mr. Pomeroy:

Q. Captain Morris, what time did you say you received this telephone call? A. About 9:30.

Q. Are you sure of the time?

A. Oh, it could have been 20 after 9:00, or 9:30, or a quarter after; around 9:30.

Q. If some of your officers stated it was 9:00 o'clock, would you say it could have been 9:00 o'clock?

A. Well, I thought it was later than that at the time. I wrote it down at the time.

Q. Now, you referred to some address. They told you in this conversation that it was Apartment B, is that right?

A. They said the top floor, Apartment B.

Q. What were you referring to when you answered the questions of Mr. Dore in regard to the

(Testimony of Robert W. Morris.)

(Testimony of Robert W. Morris.)

address? What were you reading that you took out of your pocket?

A. Well, yesterday or the day before I wrote down the address on a piece of paper in case I forgot the address today.

Q. May I see that? Would you get it, Mr. Clerk?

(Witness presents a piece of paper to the bailiff.)

Mr. Pomeroy: Mark this, please. [19]

The Witness: May I look at it before it is marked? There is something on the other side I want to look at first.

Do you want both of these sheets? This has no marks on it.

Mr. Pomeroy: No.

The Court: Let this sheet be marked Defendant's Exhibit A-1.

(Paper referred to marked Defendant's Exhibit No. A-1.)

Q. (By Mr. Pomeroy): Now, when did you make those marks to which you referred in this testimony? A. On these bottles?

Q. No; on this Exhibit A-1?

A. That I just turned in?—the piece of paper?

Q. Yes. A. The day before yesterday.

Q. Where were you when you made those marks?

Mr. Dore: I object, Your Honor. It isn't material as to the basic issue here. This witness is

(Testimony of Robert W. Morris.)

entitled to refresh his mind from what ever he might have.

The Court: Does the government admit that he has used that paper for the purpose of refreshing his recollection? [20]

Mr. Dore: Well, we might ask him, Your Honor.

Did you, Captain, use this piece of paper here to refresh your memory as to the address?

The Court: In connection with your testimony here given today?

The Witness: Yes.

The Court: The objection is overruled.

Q. (By Mr. Pomeroy): Now, Captain, where were you when you made this memorandum?

A. In Mr. Dore's office.

Q. And where did you get that address then? How did you find the address to write down? How did you get the information?

A. I believe—I am not sure, but I believe—I believe that Detective Zuarri or one of the detectives was next to me and I said, "Is that address 1219 and 1/2? And he said, "Yes." And I wrote it down. I am not sure just how I did write it down.

Q. You do not know whether that is the way or not, is that right?

A. Well, I didn't think much——

Q. That was only two days ago, wasn't it?

A. That is right.

Q. And now you do not know whether it was 9:30 or 9:00 when this call came in last November either, do you? [21]

(Testimony of Robert W. Morris.)

A. Well, I wouldn't remember for six months if I hadn't wrote it down at the time.

Q. So that at this time you are unable to tell us whether it was 9:30 or 9:00 o'clock?

A. No, I think it was closer to 9:30, but I wouldn't swear to it.

Q. Now, you say you do not know who it was that called you on the telephone, is that right?

A. That is right.

Q. Now, repeat word for word what that conversation consisted of.

A. I will repeat it to the best of my memory.

Q. That is all we can expect, Captain.

A. He asked me if my name was Captain Morris. The phone was handed to me. The fellow asked the other officer for Captain Morris. I answered the phone. I said, "This is Captain Morris." So I got something—I will have a hard time giving you the substance of that conversation word for word.

Mr. Dore: I want to interpose an objection at this time, Your Honor. I do not believe that counsel has set a proper basis for asking this question of the witness. He has not ascertained whether this witness can relate word for word the testimony of the conversation over the telephone. [22]

The Court: That objection would be proper to one conducting direct examination, but in the Court's opinion it is not well taken as applied to cross-examination. It is overruled. On cross-exam-

(Testimony of Robert W. Morris.)

ination almost limitless liberality is indulged in in favor of the cross-examiner.

You may proceed.

Mr. Dore: Yes, Your Honor.

A. He told me to get to 1219 and 1/2 Yesler as quick as I could; somebody was in trouble and I better come up and see about it. I tried to find out what the trouble was and he was a little vague. He said the fellow was poisoned. I said, "What kind of poisoning?" He said, "It could be 'goof-balls'," or something else. He said, "He is in bad shape." I said, "Where can I find you?" He said, "I'll be here." He wouldn't tell me who he was or anything about him. I talked there quite a bit. I reworded the questions different ways trying to find out who it was, or what would happen when I got there. And I said, "Why are you calling me?" He says, "I thought you would be interested."

Q. You reworded the questions, you say?

A. I tried to find out a little more about it before I went up there.

Q. Now, tell the Court what goof-balls are. [23]

A. Well, they are barbital. They don't come under the Narcotic Act. They are just sleeping tablets. We have quite a few of them. Maybe twice a day they come in.

Q. Is that all goof-balls are, barbital?

A. That is all we call them.

Q. There are goof-balls which contain narcotics, aren't there?

(Testimony of Robert W. Morris.)

A. We never use that term in the police department. Goof-balls are usually barbital.

Q. So the question was that somebody was in trouble up there? A. Yes.

Q. And what did they tell you this trouble was, again?

A. Well, he said he had passed out,—he was unconscious.

Q. And he mentioned goof-balls? A. Yes.

Q. Is that right? A. Yes, sir.

Q. And what address did he give you?

A. 1219 and 1/2 Yesler.

Q. That is all?

A. Yes,—Apartment B. I asked him where was B. And he said at the top of the stairs, the first door at the left—he said, “It is the first door at the top of [24] the stairs.”

Q. Well, now, Captain Morris, didn't you sign an affidavit on the 25th of April, 1949, concerning this call and the address that the man gave you?

A. I signed an affidavit sometime in the Spring.

Q. Didn't you say that it was at the head of the stairs on the second floor?

A. Well, I can explain that. Yes, it is the second floor. The steps there, they go up and then they turn onto a little landing and they they go up again. I don't know whether it is the second floor or not. You go up two flights of steps. I think the first one there is just a landing. I don't think—there might be a door on that floor, but I don't think so.

(Testimony of Robert W. Morris.)

Q. Well, then, you believed that you were answering a call for somebody who was out with goof-balls, is that right?

A. I didn't know what it was. I didn't know whether he was poisoned or what he was poisoned off of. He talked like he was in bad shape, that he was going to die.

Q. What did he say it was? Give us the words that made you think the man was going to die.

A. I said, "What kind of poison?" He said, "I don't know; it can be goof-balls."

Q. Is that what gave you the impression that the man was [25] going to die?

A. They die off of them, yes.

Q. Well, is that the remark made by the informer?

A. Well, he didn't know what kind of poisoning. He had evidently seen the fellow; was worried about him.

Q. Captain, did you call a doctor? A. No.

Q. Or did you call an ambulance? A. No.

Q. When people are going to die or are hurt or sick, is it usual for you with the homicide, robbery—and what other items do you take care of up there? What was your previous testimony? You took care of what for the City of Seattle?

A. The Night Shift, Detective Division,—

Q. Homicide? A. Yes.

Q. Felons? A. Yes, and burglary.

Q. Burglary? A. Yes.

(Testimony of Robert W. Morris.)

Q. Do you take the whole squad with you when you get a call, when somebody is sick or poisoned?

A. Not necessarily. I would ordinarily send out a couple of fellows. But this case, we were going out to work [26] another case, and I hadn't finished talking, and we were going up in that direction, 12th and Pike. It wasn't out of the way to go by this place here.

Q. I see. Now, when you got there you say that there was no one there, is that right?

A. At the front door?

Q. Yes.

A. I didn't see anybody at the front door.

Q. And how did you get into this apartment?

A. Just walked in.

Q. What about the door? Was there a door to the——

A. There was a door at the sidewalk of the apartments, maybe two or three feet from the sidewalk there, and that was open and I just walked in that one.

Q. That door was open?

A. No, that was shut.

Q. That was shut. How did you get through that door?

A. Just walked in.

Q. And it was not locked?

A. No, it wasn't locked.

Q. You are sure of that?

A. That is right.

Q. And then what did you do after you went through that door?

(Testimony of Robert W. Morris.)

A. Well, we looked around. We didn't see anybody. There [27] was just a little hallway there, so I walked up these steps.

Q. How many flights did you go up?

A. Well, as I remember, you walk up—may I use my hands? You walk in a little hallway. You go up a bunch of steps like that. (Indicating.)

Q. Now, at the top of that first flight of steps, is there a door there?

A. I don't remember. I don't think so, but I wouldn't—I am not sure.

Q. How many apartments are there in this building?

A. Well, I was only in the place one time. I don't know if there is over two or if there is four. I don't know.

Q. There are two apartments in that building, isn't that right?

A. Well, there could be four; I don't know.

Q. Well, did you see more than two doors?

A. Well, I don't remember now.

Q. You do not remember how many doors you saw?

A. No. I saw a door—it seems to me there was a door on the first floor, to your right as you go in the first door. There was a door there.

Q. And then you go up a flight of stairs?

A. Yes. [28]

Q. Is there a door there?

(Testimony of Robert W. Morris.)

A. I don't know whether there is a door there or not.

Q. Then you go up some more?

A. You turn to your right and go back up some steps.

Q. And there is another door there?

A. Yes.

Q. You did not know how many doors there were?

A. All I can remember is the two doors, the one on the first floor and this one to his room.

Q. Well, now, when you got up to the apartment which Mr. Parker has, you went through that door, too? A. That door was open.

Q. That door was open. How far was it open, Officer? A. About that far.

Q. You are indicating about how many inches, would you say?

A. Oh, eight, nine, ten or twelve.

Q. Eight, nine, ten or twelve. Were there any lights on in that apartment?

A. No. There was a light in the hallway, and you could see around the apartment fairly well, though. There were lights from the street and from the hallway. You could see everything in the room very plain.

Q. And was there any light on in the apartment?

A. Well, there was none in the dining room and the living [29] room, until we got to his bedroom.

(Testimony of Róbert W. Morris.)

Q. Did you see any lights as you stood in the hallway looking into his opening which you say was the door? A. No.

Q. Did you hear any noise? A. No.

Q. You just walked in?

A. I kept calling out. I didn't want to get shot.

Q. And you heard no answer?

A. No answer.

Q. And then you walked on in?

A. That is right.

Q. And then where did you go after you went into that door?

A. Well, I went—I went through that door into the living room; then I went into the dinning room.

Q. And how did you get into these various rooms? Did you open the doors to go in?

A. Between the living room and dinning room is wide open. It is just a big arch, you know. (Indicating.)

Q. How did you get in to where Mr. Parker was?

A. I saw an—in the dinning room, I saw a door there. I was calling out all the time. So I opened the door and called out.

Q. That door was closed and you opened that?

A. That is right.

Q. And you called out. And all these men that you took with you, they all work with you on the squad, don't they? A. Yes.

Q. And you did not call a doctor?

(Testimony of Robert W. Morris.)

A. After I saw him, you mean?

Q. No, before,—upon receipt of this anonymous call.

A. They would'nt answer a call——

Q. Just a moment! Did you call a doctor?

A. No.

Q. Did you call an ambulance? A. No.

Mr. Dore: Your Honor, I object here. I believe the witness has a right to explain his answer. He was endeavoring to explain his answer and counsel cut him off.

The Court: I think, also, that the counsel examining has the right to have the question answered. In this particular instance the government counsel can redirect the witness' attention to further details if that seems later to be desired.

Mr. Dore: Yes, Your Honor.

Q. (By Mr. Pomeroy): Now, you went in a car by yourself up there, did you? [31]

A. Yes, sir.

Q. And how many other cars went along on this trip?

A. Well, I think there was two other cars.

Q. You think there were two other cars. Do you know?

A. Well, yes. The other fellows went up—they each had a car,—Zuarri and Waitt had a car and Musselman and Ivy had a car.

Q. Three cars went up there, then?

A. Yes.

Q. Is this a two-story building or three-story?

(Testimony of Robert W. Morris.)

A. Two-story.

Q. A two-story building. You do not know how many apartments there are in it?

A. Well, I was only in the place one time. I didn't pay any attention to it. It might have been three-stories. I wouldn't bet money on it.

Q. Now, as a matter of fact, Captain Morris, when you walked into the room where Mr. Parker was, you showed him your badge, didn't you?

A. Not at first.

Q. Well, how long after you had been in there did you show him your badge?

A. We had a little conversation first.

Q. What was that conversation?

A. When I went in the door first I said, "What seems to be [32] *to be* the trouble?" I saw a man laying there passed out. He said, "There it is." Shall I go ahead?

Q. Go ahead.

A. He said, "There it is." I said, "There what is?" He said, "There it is." I said, "There what is?" I looked down and then is when I saw this outfit. I never saw it up until that time.

Q. You had no idea there would be narcotics in that room when you walked in?

A. No, I didn't have any idea.

Q. No idea at all, even after the man mentioned goof-balls to you?

A. They are not narcotics.

Q. During this conversation, I will ask you

(Testimony of Robert W. Morris.)

Captain Morris, didn't you say to Mr. Parker, "Well, we understood there would be more narcotics here, more opium?" A. No.

Q. Did you or did you not make such a statement to Mr. Parker at that time?

A. I did not.

Q. Did you make any statement that sounds similar to the words I have just used?

A. I might have made a statement like when I was telling the fellows to search, "There must be some more around—go ahead and look; there must be some more around." [33]

Q. Why would you say that?

A. Well, we had this one bottle there, and they did dig up Yen Shee and a bunch of stuff later on.

Q. You say you did not make such a statement to Mr. Parker? A. No, sir.

Q. But you understood there was more there?

A. I didn't say that.

Q. As I understand on direct examination, you asked him if he would help you, is that right?

A. That is right.

Q. And how did you mean that?

A. Well, I would like to get the source of the supply. I was interested in that.

Q. Did you make him any offer of reward for his help?

A. I just asked him if he would like to turn his connection in. And he said he wasn't interested. And I smiled and said, "That is all right. That is

(Testimony of Robert W. Morris.)

fine.” That is about as far as the conversation went on that subject.

Q. During that conversation didn’t you say to Mr. Parker, “If you will tell us where you got it, we can take this and put it with our next case, add it to that and let you out?”

A. No, I didn’t say that. [34]

Q. You are sure of that? A. Yes, sir.

Mr. Pomeroy: I want to have this marked for identification.

The Court: Let this be marked Defendant’s Exhibit A-2.

(Exhibit referred to marked Defendant’s Exhibit A-2 for identification.)

Mr. Pomeroy: Is there some way, if your Honor please, that we can have that placed on an easel?

The Court: No, but if it is of great importance, Mr. Pomeroy, both counsel can come forward; and if you wish the defendant to likewise come forward, he may do that.

Mr. Pomeroy: If your Honor please, I wish to state at this time that I had this prepared beforehand rather than to have him make it here. All it purports to be is the street.

Mr. Dore: May I ask, Counsel, is it in any definite scale?

Mr. Pomeroy: No, it is not in any definite scale.

Q. (By Mr. Pomeroy): Is this a reasonable

(Testimony of Robert W. Morris.)

facsimile, Captain Morris, of the streets surrounding the general area where this arrest took place?

A. It is.

Q. Could you mark on Defendant's Exhibit A-2 the approximate location of the building where this arrest took place?

A. This is a little alley. I will put that on there. It might help.

Q. An alley?

A. There is a little street in here.

Q. Make that an "A." The figure "A" marks a little alley which has been placed in there by Captain Morris.

A. His house is about here.

Q. The house in which the arrest was made. Now, will you make a little "x" there—or make it "B." Make it a "B."

A. (Witness complies.)

Q. Now, Captain, you say that is a two-story house, is that right?

A. I said I wasn't sure. I think it is. It could be.

Q. And upon getting the call about someone being poisoned, or dying in this house, you rushed up there. Now, where did you park your car when you went up there?

A. It was somewhere along in here.

Q. Just put a little mark there, and make that "C."

A. Let me think a moment. (Witness complies.)

(Testimony of Robert W. Morris.)

Q. That is where you parked your automobile on this call? [36] A. Yes.

Q. Where did Zuarri and Waitt park their automobile?

A. I will explain and it will help me remember. I got out of the car——

Q. Just a moment! Just please state where Zuarri and Waitt parked their car?

A. I don't know.

Q. You have no knowledge where that car was?

A. They either parked back here or over here. One seemed to me to be parked over here. (Indicating.)

Q. Just a moment! Maybe this will help you recall. Where was Mr. Parker taken and how was he taken to the station after the arrest? Whose car was he placed in and where was that car?

A. Well, I don't remember.

Q. Well, weren't you with him after the arrest?

A. I don't think I took him down to the station. I think one of the other fellows did.

Q. Weren't you all out in the street together when you arrested him?

Mr. Dore: I object, your Honor. This was not brought up in direct examination, as to what occurred after the arrest.

The Court: Overruled.

A. The other fellows parked either here or here. (Indicating.) [37]

They got out of their car——

(Testimony of Robert W. Morris.)

Q. All right. Now, will you make a little "D" there for one of them? A. "D?"

Q. "D."

A. I am not positive of this. I think there was one parked here.

Q. And make an "E" over here.

A. (Witness complies.)

Q. Now, you think the other two cars were parked that way, is that right?

A. Well, I think so.

Q. Now, I will ask you whether or not, Captain Morris, one car wasn't parked over a block away and around the corner?

A. Well, I didn't—

Q. Just a moment. At the time you were searching this house?

A. I don't think so. I don't know. I wouldn't know.

Q. Didn't you walk up this street with the defendant and the other detectives? (Indicating.)

The Court: Which street, Mr. Pomeroy?

Q. Indicating 12th Avenue, after the arrest?

A. I didn't go back to the station with him after the arrest, I don't think, at all. [38]

Q. I said: Didn't you go out in the street and go around this corner? A. I did not.

Q. I will ask you: Wasn't there one of your cars parked about a block north of Yesler Way rather than where you indicated?

A. I don't believe so. I don't know.

(Testimony of Robert W. Morris.)

Q. Well, didn't you just indicate that they were parked all around here in this area on Yesler Way near the apartment house?

A. I told the fellows 12th and Yesler, and when I got up there they drove up. And I saw the fellows here. (Indicating.) I think one turned around here and parked and one came up here. They were all standing down the street here when they got out of their cars.

Mr. Pomeroy: That is all.

Redirect Examination

By Mr. Dore:

Q. Looking at this chart again, Captain, from where you sit there, you have marked certain places here where you believe the cars were?

A. I am not sure about those other cars. All I know about is my own. They might have parked anywhere.

Q. In other words, you were not certain. You are not [39] certain at this time where those cars were parked; is that true?

A. I wasn't paying any attention.

Mr. Dore: That is all in regard to the chart, your Honor.

Mr. Pomeroy: That is all.

The Court: Is there any further cross-examination?

Mr. Pomeroy: No, your Honor.

Mr. Dore: Yes—excuse me, your Honor. I have some redirect.

(Testimony of Robert W. Morris.)

The Court: Government counsel may now ask questions on redirect examination.

Redirect Examination

By Mr. Dore:

Q. Mr. Pomeroy asked you, Captain, whether you called a doctor, and you said no, that you had not, and then I believe you tried to explain why. Would you tell the Court why you did not call a doctor?

A. Well, doctors or ambulances won't come out on any of these police cases until you look at the person first and see how they are and then call for them. They haven't time unless the police say first that they are needed.

Q. Has that been your general experience with the number [40] of cases you have handled?

A. That is right.

Mr. Dore: No further questions.

Mr. Pomeroy: That is all.

The Court: Step down.

(Witness excused.)

The Court: At this time we will take a five minute recess.

(Whereupon, a five minute recess was taken.)

The Court: You may proceed.

Mr. Dore: I will call as my next witness, your Honor, Andrew Zaurri.

The Court: Let the record show that all are present as before the recess.

ANDREW ZUARRI

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. Mr. Zuarri, will you state your name and spell your last name for the record?

A. Andrew Zuarri, Z-u-a-r-r-i.

Q. Will you give your address, please? [41]

A. 2829 Elmore.

Q. What is your business or occupation?

A. Police officer.

Q. How long have you been a police officer?

A. Oh, approximately two and one-half years.

Q. Are you employed by the Seattle Police Department? A. I am.

The Court: Is there anyone else having a name like yours, or similar to yours, who has been connected with the police department longer than you have?

The Witness: Yes, sir. My father is a retired police officer.

The Court: You may continue.

Q. (By Mr. Dore): And what detail are you attached to? A. Felony unit.

(Testimony of Andrew Zuarri.)

Q. What captain is in charge of that unit?

A. Captain Morris.

Q. Now, were you so employed on November the 24th, 1948? A. I was.

Q. And what shift did you have that day?

A. Eight to four. That is our usual shift.

Q. Now, where were you at approximately 9:00 or 9:30 that evening?

A. I was in our detail office.

Q. Who else was present there? [42]

A. Captain Morris, Detective Waitt, my partner, Detective Musselman and Detective Ivy.

Q. And what occurred about that time?

A. Well, Captain Morris—well, the phone rang and I answered it. It was for Captain Morris.

Q. Then what happened?

A. I, in turn, gave him the phone and he talked to the party on the phone. I didn't pay any attention to the conversation. Then Captain Morris said, "Well,—

Mr. Pomeroy: Just a moment! You cannot relate any conversation.

The Court: You may say what happened, but do not use the words anyone spoke.

Q. Do not recite his conversation, the Judge means. What happened?

A. We were then ordered to leave the office.

Q. And what was the basis of the order? If you know. A. The phone call.

Mr. Pomeroy: Well, just a moment!

(Testimony of Andrew Zuarri.)

Q. Do you know the nature of the call?

A. No, sir; I didn't,—not at that time.

Mr. Pomeroy: I move that the answer be stricken, if your Honor please, to the previous question where I said, "Just a moment."

The Court: "What was the basis of the call?" Is [43] that the question to which the objection was made?

Read that back to me, Mr. Reporter.

(The reporter read back as follows:

"Q. And what was the basis of the order?

if you know. A. The phone call.

Mr. Pomeroy: Well, just a moment!

Q. Do you know the nature of the call?

A. No, sir; I didn't,—not at that time.")

The Court: Well, that objection is sustained. It will be stricken.

Q. (By Mr. Dore): What were your orders at that time?

A. We were told to meet the Captain at 12th and Yesler.

Q. And what did you do?

A. Well, I and my partner, Detective Waitt, got into our police automobile and drove to 12th and Yesler.

Q. And about what time did you arrive there at 12th and Yesler?

A. I imagine it was within five or six minutes after we left the station.

(Testimony of Andrew Zuarri.)

Q. Which would be approximately what time?

A. Oh, about 9:15.

Q. About 9:15. And when you got to 12th and Yesler, who did you meet there, if anyone?

A. Well, we saw Captain Morris on the street corner. We [44] parked our automobile and walked up to him.

Q. Where did you park your automobile? If you recall.

A. I am fairly certain it was parked facing west on Yesler Way towards 12th Avenue.

Q. Now, you say that you then walked up to Captain Morris. Where was he at the time?

A. He was standing in front of 1219 and 1/2 Yesler Way.

Q. Now, you say that this was about 9:15 in the evening. What was the condition as to light at that time?—light or darkness?

A. It was dark.

Q. And are there any lights in that locality?

A. I am not sure.

Q. What did you do after you met with Captain Morris there?

A. We waited a few minutes for Detective Ivy and Musselman.

Q. And did they arrive later?

A. Yes. They arrived a few minutes later.

Q. And then what occurred after Musselman arrived?

(Testimony of Andrew Zuarri.)

A. Captain Morris ordered Detective Ivy and myself to stay outside in the street.

Q. And did Detective Morris say anything else at that time?

A. He said for us to wait there. If he needed us he would call us, because he wasn't too certain as to what it [45] was all about and he didn't want too many up in there.

Q. And did you go into the house with Captain Morris?

A. No, sir; I did not,—not at that time.

Q. Where did you stay?

A. We stayed on the street in front of 1219 and 1/2 Yesler Way.

Q. Did you see Captain Morris go into the apartment? A. Yes, sir.

Q. And from your recollection what was the position of the door near the sidewalk?

A. It was right off the sidewalk.

Q. Was the door open or closed when you saw it?

A. Well, the door was shut while we were standing there.

Q. It was shut. Did Captain Morris have any difficulty going through the door? A. No, sir.

Q. It opened right up, did it?

A. It opened right up.

Q. Did he say anything at that time when he went into the house? A. Not that I recall.

Q. Now, did you later go into the apartment?

(Testimony of Andrew Zuarri.)

A. Yes, sir.

Q. About how long after Captain Morris went in?

A. Oh, possibly seven or eight minutes. [46]

Q. And do you recall who went into the apartment with Captain Morris?

A. Yes, sir.

Q. Who was that?

A. Detective Waitt and Detective Musselman.

Q. Now, you say you went in about eight minutes after that. What did you do when you got in there; what did you see and hear?

A. Well, when we got in there Captain Morris gave us orders to search, and just at that time—he just designated a portion of the apartment for me to search, and I proceeded to search.

Q. What portion did he designate for you to search?

A. Well, the kitchen and the back porch.

Q. Now, who was there at the time you came into the apartment?

A. Well, Captain Morris, Detective Waitt and Detective Musselman. Detective Ivy followed me into the room and the defendant was standing in the dining room.

Q. This man seated here to my right?

A. Yes, sir.

Q. Next to Mr. Pomeroy?

A. Yes, sir.

Q. And you say he was in the dining room at the time that you arrived there. Now, what search did you make [47] and what did you find?

(Testimony of Andrew Zuarri.)

A. I searched the back porch and the kitchen and, also, a portion of the bathroom.

Q. Did you find anything?

A. I found a couple of empty jars, one particular jar that had traces of something in it.

Q. Well, now, before you on the desk there is Plaintiff's Exhibit 2 for identification. Can you identify any of those objects before you?

The Court: Will you place back on each receptacle the cover that you take off of it immediately after you finish examining it so as not to confuse the covers that came with the containers?

A. This is one jar I found in the bathroom.

Q. How could you identify that as being the jar?

A. By the mark.

Q. What mark?

A. Well, I put two numbers of my serial number on it.

Q. What are those numbers?

A. My number is 777.

Q. And what did you put on the jar?

A. 77.

Q. And where is that marked on the jar?

A. On the lid.

Q. Does that jar contain anything? [48]

A. It had traces of some product in here.

Q. Is there anything else there that you can identify? A. (No response.)

Q. Is there anything else that you saw there in the apartment at the time you were present?

(Testimony of Andrew Zuarri.)

A. Well, I saw a number of jars, but I didn't mark them.

Q. Were they similar to the jars before you?

A. They were similar to those jars. I would hesitate to say those are the same jars.

Q. Now, as to those objects on your left there, can you identify any of those, or did you see any of those while you were there?

A. I saw objects similar to those.

Q. And what objects did you see?

Mr. Pomeroy: For the purpose of this record, in order to shorten the time, we will stipulate that these things were found at Ruis Parker's apartment at 1219 and 1½ Yesler Way and no further identification is necessary as far as we are concerned in this case,—just the procedural form of identification of these items.

Mr. Dore: Thank you, Counsel.

Q. (By Mr. Dore): What did you do with this jar that you found?

A. I placed it on a table with a bunch of others.

Q. Do you know what happened to this evidence before you,—or these items before you? [49]

A. They were taken down to the police station and then placed in evidence.

Q. Who did that?

A. Ivy and Detective Musselman.

Mr. Dore: May I have this marked Plaintiff's Exhibit 3, your Honor, for identification?

(Testimony of Andrew Zuarri.)

Mr. Pomeroy: I am ready to stipulate, Mr. Dore, that it is not necessary to further identify those.

Mr. Dore: I would like to have that in there to complete the case, your Honor.

The Court: Plaintiff's Exhibit 3 will now be marked for identification.

(Exhibit referred to marked Plaintiff's Exhibit Number 3 for identification.)

Q. (By Mr. Dore): Can you identify that Plaintiff's Exhibit 3 for identification?

A. Yes, sir.

Q. What is that?

A. This is the envelope that I filled out when I placed this evidence into evidence.

Q. And what did you place in that envelope at the time?

A. Well, it is all listed on the face of the envelope, what went in there.

Q. And where did you place that evidence?

A. Into the police department property room.

Q. With whom?

A. Officer Frank Leary who was on duty at the time. He received the envelope.

Q. Now, did you at any time talk to the defendant, Mr. Parker? A. Yes, sir.

Q. When did you talk to him?

A. He was in our car on the way down to the station, and I talked to him on the following day.

(Testimony of Andrew Zuarri.)

Q. What did he say at the time that he was in your car?

The Court: If anything! He has not yet said that anything was said in the car.

Mr. Dore: He said that he had a conversation, your Honor.

The Court: Well, he said he was in the car with him and then he talked to him the next day, as I understood it.

Q. (By Mr. Dore): Well, did you have a conversation with Parker in the car on the way to the station? A. Yes, sir.

Q. And what did you say and what did he say?

A. The conversation amounted to about the length of time that he had been using a narcotic.

Q. Well, what did you say and what did he say?

A. Well, I asked him how long he had been using. And he [51] said, "Approximately five years."

Q. Was anything else said on the way to the station in the car?

A. He stated at that time that he had acquired the habit about five years ago, and meanwhile had taken the cure in that period of time, and then he started again.

Q. Was there any further conversation on the way to the station that you recall?

A. Yes, one more thing. He stated at the time

(Testimony of Andrew Zuarri.)

that he was glad it happened because he wanted to take the cure.

Q. Anything further?

A. No, sir; that's about all.

Q. Now, you say that you had a conversation with him subsequent to the ride in the car to the station. When and where was that?

A. That was the following day, which was Thanksgiving.

Q. And when and where did you talk to him?

A. That was about 8:00 p.m., in the evening at the felon detail office.

Q. And what was said at that time by you and by the defendant?

A. It was in regard to how he was feeling.

Q. Just relate to the best of your recollection what was said. [52]

A. Well, it was—the conversation was as to how long he had been using narcotics, and mostly we discussed, oh, different effects and one thing and another. It was more or less an impersonal conversation, things that I was curious about, and, as I say, as to how he was feeling.

Q. Was there any further conversation at that time?

A. Nothing more than I remember he added that he wanted to take the cure, and we discussed that.

Q. Did you ever take a statement from the defendant?

A. I took a statement, but it was mislaid.

(Testimony of Andrew Zuarri.)

Q. You do not have that with you now?

A. No, sir.

Q. Do you have any knowledge of where it might

be? A. No, sir.

Q. And at the time you took the statement, what did he tell you then?

A. Well, it was just an admission that he had smoked opium.

Q. Anything else?

A. Nothing other than that.

Q. Anything concerning the date of November the 24th?

A. No. Mr. Parker and I got along very good. He was very cooperative and we had a very friendly talk. He didn't want—— [53]

Q. You did not ask him about the items in the apartment?

A. Well, he admitted that they were his.

Q. When did he admit that to you?

A. Well, in the statement there was that admission.

Q. And when was that statement taken?

A. That was on the 25th.

Mr. Dore: I have no further questions.

Cross-Examination

By Mr. Pomeroy:

Q. Mr. Zuarri, how much after Captain Morris got to 1219 and 1½ Yesler Way on the particular night that Parker was arrested did you arrive there?—how long after him?

(Testimony of Andrew Zuarri.)

A. Oh, I don't really know that. He was already there when we got there.

Q. He was there?

A. He was standing on the street.

Q. All right. And how long after you got there did the other two detectives come?

A. Oh, possibly five minutes or more.

Q. Five minutes or more. Now, how long did it take you to go from your patrol office, or where you were with the other detectives and Captain Morris, up to 1219 and $\frac{1}{2}$ Yesler Way? [54]

A. That would depend on whether we had our cars assigned out at that particular time.

Q. How long did it take you to go down and get in your car and go right out?

A. Oh, I don't imagine it would take more than five minutes.

Q. Five minutes to get up there. Now, you are under oath, and you say Captain Morris just walked in and the front door was unlocked?

A. Yes, sir.

Q. Absolutely unlocked? He just walked in?

A. All I saw the man do was put his hand on the door, and the door opened.

Q. Now, Mr. Zuarri, did you arrest the man?

A. He was already under arrest when I got there,—got into the apartment.

Q. And then did you take him out to your car?

A. I and Detective Waitt.

Q. All right. Now, just describe to the Court

(Testimony of Andrew Zuarri.)

the direction you went and where you went with the man after the arrest?

A. We took him across the street into the car.

Q. Just a moment! Who was with you when you left the apartment with the man?

A. Detective Waitt. [55]

Q. Just the two of you? A. Yes, sir.

Q. Where were the three other detectives?

A. They either followed us out or were on the street already.

Q. You do not know whether they went out first. You do not think they were left up in the apartment, do you?

Mr. Dore: I object, your Honor; that is argumentative.

The Court: Overruled.

Q. (By Mr. Pomeroy): You may answer.

A. As I recall, Detective Musselman and Ivy carried the evidence out; and we were ordered to take Mr. Parker in our car.

Q. Well, did you go out first or did the officers with the evidence leave first?

A. I remember Mr. Parker locking the door, so I imagine every one was out of the apartment.

Q. He locked the door to his apartment?

A. In my presence.

Q. Then you and Waitt took him down to the car, is that right? A. Yes, sir.

Q. And just describe to the Court the direction you took to go to your car and where your car was

(Testimony of Andrew Zuarri.)

after you [56] left the entrance to the apartment house known as 1219 and $\frac{1}{2}$ Yesler Way?

A. Well, we walked across the street.

Q. Directly across the street?

A. Well, on an angle, more or less.

Q. On an angle across the street. I will show you what is marked as Defendant's Exhibit A-2 for identification. Do you recognize that as being similar to the location of the streets around where 1219 and $\frac{1}{2}$ Yesler Way is? A. Yes, sir.

Q. Can you, with a pencil, show the Court the direction which you took with the prisoner to your car? Can you step down and do that? "B" there happens to be marked. Do you agree that that is the approximate location of 1219 and $\frac{1}{2}$ Yesler?

A. I would say the approximate location.

Q. Now, do you have a pencil on you?

A. I have a pen.

Q. A pen.

The Court: Stand as far as you can to your left, Mr. Zuarri, and at the same time allow yourself the opportunity of reaching the location on the map with a pencil.

Q. Just mark it on there. [57]

A. I would say our approximate route was somewhat similar to that. (Indicating.)

Q. And where was your car parked, then?

A. It was on this side of the street facing west.

Q. Just mark in where your car was parked. Mark your car in there, if you will.

(Testimony of Andrew Zuarri.)

A. (Witness complies.)

Q. And mark that "F."

A. (Witness complies.)

Q. And that which is marked "F" is where your car was parked? A. Approximately.

Q. While you were in this apartment?

A. Yes.

Q. And your diagonal line, mark that "G."

A. "G." (Witness complies.)

Q. The line "G" is the approximate direction that—marks the approximate direction that you took the prisoner from the entrance of 1219 and 1/2 to your car? A. That is right.

Q. And then you left there, from that location, and took the prisoner to jail?

A. Yes. It was raining at the time.

Q. Well, what has that to do with it?

A. Well, that is how well I can remember. [58]

Q. That is to show that your recollection is good?

A. Good at that particular time.

Mr. Pomeroy: That is all.

The Court: Is that all?

Mr. Dore: No further questions, your Honor.

The Court: You are excused, Mr. Zuarri.

(Witness excused.)

The Court: At this time we will take our noon recess.

(Whereupon, a recess was taken until 2:00 o'clock p.m.) [59]

August 4, 1949, 2:00 o'Clock P.M.

(All parties present as before.)

The Court: You may call your next witness.

Mr. Pomeroy: May I ask Mr. Zuarri another question?

The Court: Yes. Mr. Zuarri, will you come forward and resume the stand?

ANDREW ZUARRI

the witness on the stand at the time of the noon recess thereupon resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Pomeroy:

Q. Mr. Zuarri, when you went to 1219 and 1/2 Yesler Way, Captain Morris was already standing on the sidewalk, is that right? A. Yes, sir.

Q. In front of this place?

A. I think it was in front. I am fairly sure it was in front.

Q. Well, in that approximate vicinity?

A. In the vicinity; not directly in front.

Q. Then you say five minutes or more later up came these other two officers, Ivy and Musselman?

A. Well, in a matter of a few minutes.

Q. And where did they come from?

A. Well, we all left the station——

Q. No! No! When you first saw them, when

(Testimony of Andrew Zuarri.)

you were standing there with Captain Morris, where did you first see Ivy and Musselman?

A. They were coming east on Yesler Way.

Q. They were going east on Yesler Way?

A. They were just about at the intersection of 12th.

Q. At the intersection of 12th. That was your first observation of them? A. Yes, sir.

Q. And then they walked, did they, up there to where you were?

A. They walked—I saw them on the street. They walked up. How far they walked, I don't know.

Q. But you first saw them up from the corner of 12th and Yesler? A. They were in the car.

Q. They were what?

A. They were in the car.

Q. Oh, you first saw them in the car?

A. In the car.

Q. And they came up by car, then?

A. Yes, sir. [61]

Q. And then you saw them—you saw the car, then, rather than the men first?

A. Yes, I noticed the car.

Q. And you saw the car where again?

A. I don't remember if it was in the intersection or before it entered the intersection at 12th and Yesler.

Q. At 12th and Yesler. And then what did they do in their car?

A. I am not too certain—they disappeared—

(Testimony of Andrew Zuarri.)

whether they were looking for a parking place or were trying to find us. I believe they parked their car somewhere where we couldn't see it and come walking up.

Mr. Pomeroy: If your Honor please, I would like to come forward again.

The Court: You may do that, and opposing counsel will have and enjoy the same privilege.

Q. (By Mr. Pomeroy): Now, my understanding of your testimony is that you were standing here. (Indicating.)

A. Well, approximately there. (Indicating.)

Q. Approximately there. And you first saw them—would you make a little mark there and just label it “H?”

A. (Witness indicates with a mark.)

Q. And that is where you first saw Ivy and Musselman?

A. As I recall now, they made a left hand turn in the intersection. [62]

Q. Well, just make an “H” there where you first saw Ivy and Musselman.

A. (Witness complies.)

Q. Now, it is my understanding that that is where the car was with Ivy and Musselman in it when you first saw it? A. Approximately.

Q. Then where did they go in their car?

A. I believe they made a left hand turn and then possibly went up a block—

(Testimony of Andrew Zuarri.)

Q. Now, just a moment. They turned left and went north on 12th Avenue, is that correct?

A. I believe so.

Q. And then you did not see them anymore?

A. No.

Q. I see. And then where did you see them next?

A. Well, the next time I saw them was coming up the sidewalk.

Q. Coming up the sidewalk?

A. Coming up the sidewalk.

Q. Where was that? —on which sidewalk and where?

A. Well, it would be on the south side of the street,—walking west.

Q. The south side of Yesler?

A. On 12th, on Yesler. [63]

Q. You never saw them cross this intersection? (Indicating.) A. No; I don't recall that.

Q. Then what were you and Morris and your partner doing while you were waiting for them there? A. We were just standing in front.

Q. You were not watching for them to come?

A. I was.

Q. But you did not see them at all across the street there, or anything?

A. When they walked across the street, no; not at that particular time,—not that I recall.

Q. I see. You made an affidavit in this case, did you not? A. Yes, sir.

(Testimony of Andrew Zuarri.)

Q. And in that affidavit you said, "Ivy and Musselman came up on foot." You mean the second time you saw them?

A. The second time—the last time I saw them prior to Musselman going into the apartment house. They came up on foot.

Mr. Pomeroy: That is all.

Mr. Dore: I have just one question.

Redirect Examination

By Mr. Dore:

Q. As to the practical location of this 1219 and 1/2 [64] Yesler Way, that is in the City of Seattle?

A. It is.

Q. County of King? A. It is.

Mr. Dore: That is all. Step down.

(Witness excused.)

The Court: Call your next witness.

ROBERT W. WAITT

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. State your name. A. Robert W. Waitt.

Q. And what is your address?

A. 13219 1st Southwest.

Testimony of Robert W. Waitt.)

Q. And your business or occupation is what?

A. I am with the Seattle Police Department.

Q. How long have you been with the Seattle Police Department?

A. Six years.

Q. And what detail are you attached to in the department?

A. To the felon unit,—to the felon department,—detail. [65]

Q. Were you so employed on or about November the 24th, 1948?

A. Yes.

Q. Now, were you and—were you in Captain Morris' office at the time you received the telephone call that evening on the 24th?

A. Yes.

Q. And after he received the telephone call, did he give you certain orders?

A. Yes.

Q. What were those orders?

A. He told me to meet him at 12th and Yesler.

Q. And did you go to 12th and Yesler?

A. I did.

Q. About what time did you leave the police station?

A. Approximately 9:30.

Q. And approximately what time did you arrive at 12th and Yesler?

A. Oh, it wouldn't be over five minutes. We just walked out and got in our car and drove up to 12th and Yesler.

Q. And upon arriving at 12th and Yesler, who was there?

A. Captain Morris.

Q. And then what did you do?

Testimony of Robert W. Waite.)

A. We walked across the street and he told me to come with him [66]

Q. And did you go with him? A. Yes.

Q. Where did you go?

A. 1219 and 1/2 Yesler Way.

Q. And what did you do when you got to that address?

A. We walked in through the front door and went up.

Q. Was the door open or closed?

A. The door was closed, but that's the main entrance to it.

Q. Was the door locked? A. No.

Q. What was your position with regard to Captain Morris? A. I was directly behind him.

Q. How far behind behind him at the time?

A. Well, I couldn't say as to the matter of feet. I was the next man. If you are walking in single file, I was directly behind him.

Q. Could you illustrate with your hands about how far away you were from him?

A. Well, I would say I was about three feet to the rear of him,—not over that.

Q. Who else was present?

A. Detective Musselman.

Q. Now, you say the door was unlocked?

A. Yes.

Q. Who opened the door? [67]

A. Captain Morris.

Q. And then what occurred?

Testimony of Robert W. Waitt.)

A. We went into a short hallway, up a flight of stairs, made a turn and went up another flight of stairs.

Q. Was that turn to the right or left?

A. Well, we turned—we went up this way and turned this way. (Indicating.) That would be left, I guess—we turned right.

Q. Your turned right? A. Yes.

Q. And what did you do when you got to the top of the stairs?

A. When we got to the top of the stairs there was a door on our left, and it was open. Captain Morris walked in.

Q. Were there any lights visible inside?

A. No.

Q. Was there any light or reflection from the outside in the apartment?

A. Partly in the front room of the apartment.

Q. Now, how far was that door open in the apartment? A. Approximately six inches.

Q. And what did Captain Morris do at the time that he went into the apartment? Did he say anything or do anything?

A. He pushed the door further on open and he—I heard him ask if there was anybody home. [68]

Q. Did you say anything at the time?

A. No, I didn't.

Q. And then what happened after you got into the apartment?

A. We entered into what was apparently a liv-

Testimony of Robert W. Waitt.)

ing room. It was a pretty good size room. And then we walked straight on back towards the dining room and he called out again, "Is there anybody home?"—or "Is there anybody here," or words to that effect. He got back into the dining room and there was a door—there was a door to our left—and he opened that door, and I went in there with him.

Q. And what was in there?

A. There was a bedroom.

Q. And what did you see in there?

A. There was a small light on over a nightstand that was sitting by the head of the bed and there was a man laying on the bed.

Q. Do you see that man in court today?

A. Yes.

Q. Can you point him out?

A. He is the defendant in the case. (Indicating.)

Q. Sitting next to Mr. Pomeroy?

A. Yes, sir.

Q. And what happened in the bedroom there?

A. Captain Morris asked him, "What's wrong?"—or "What goes on?"—or something like that—words to that effect. I don't recall exactly what he did say to the man. And the man kind of opened his eyes like—I mean you could see him open his eyes. It was kind of dim,—kind of dark in there. And he says, "There it is." And I didn't see anything at first, when I first looked, because we just came in from a lighted hallway.

Q. Then what happened?

Testimony of Robert W. Waitt.)

A. So Morris asked him,—Captain Morris asked him, “There what is?” Then we looked and then we saw this outfit there.

Q. Before you there is Plaintiff’s Exhibits 1 and 2. Did you see any of those objects there?

A. Yes.

Q. What specifically did you see?

A. This dinner plate, and this little vasoline jar; this burner.

Q. Was that burning at the time?

A. Yes, it was. And this paper thing, and this pipe—pipe affair, and this needle here, and there is one——

Q. Now, did you make a search of the apartment? A. Yes, I did.

Q. Was that before or after the man was placed under [70] arrest?

A. That was after the man was placed under arrest.

Q. And did you find any specific items that are before you there? A. Yes, I found this box.

Q. Where did you find that?

A. I found that in the night stand,—in the top drawer of the night stand.

The Court: In the night stand?

The Witness: Yes,—what they call a night stand. The light was sitting on this stand, and, also a little radio, I believe.

Q. Was the door open or closed?

A. It was closed.

Testimony of Robert W. Waitt.)

Q. Did you find anything else?

A. I found one of these jars that's got—that had a newspaper inside that had some narcotics in that.

Q. Can you identify that jar there?

A. I would have to open it up.

The Court: You can unscrew the tops, but after you have looked at the contents, then put the top back on. Be sure to get the same top back on the identical jar or container from which you took it.

A. This one here that has got the newspaper in it.

Q. Is it marked? Did you mark it? [71]

A. Yes.

Q. How is it marked?

A. It's got my initials R. W. W., and my serial number, 5455 T.

Q. Did you find anything else in the apartment?

A. In the bathroom—on the bathroom shelf we found the rest of these jars.

Q. Was that a medicine cabinet?

A. It was just an open shelf. There was four or five of these jars all lined up.

Q. Now, did you talk to the defendant, Mr. Parker, at any time while you were there?

A. No; I never said anything.

Q. Were you present at any time when any other officer talked to him?—while you were there?

A. No.

Q. Did you talk to him subsequent to leaving 1219 and 1/2 Yesler Avenue?

Testimony of Robert W. Waite.)

A. I might have asked him—I am not sure whether I asked him if there was any more narcotics in there or not. Other than that, no.

Q. Do you know what became of these objects after you left 1219 and 1½? Do you know who had them?

A. This was all taken out into the front room. As each piece was picked up, it was taken out in the front room and it was put on a little table that was right [72] beside the door. Captain Morris was there practically all the time. And I remember I brought out some of the stuff, and some of the other detectives brought out some of the stuff, and from there Captain Morris took it all down to headquarters.

Q. Did you see him take it to Headquarters?

A. Well, he left there ahead of us because my partner and I took the defendant.

Q. Did you have anything to do with those items after that?

A. I just saw them down at Headquarters.

Q. Did you have any conversation with the defendant when you left there? Did he ride in your car?

A. Yes, he did.

Q. Did you have any conversation in the car with him?

A. No, I don't believe I said anything to him.

Q. Did you hear any conversation between the defendant and anybody else in the car?

A. There might have been, but I don't recall.

Testimony of Robert W. Waite.)

Q. Yes. Now, just one other question. In regard this 1219 and $\frac{1}{2}$ Yesler Street, was that in the City of Seattle? A. Yes, sir.

Mr. Dore: Your witness. [73]

Cross Examination

By Mr. Pomeroy:

Q. Mr. Waite, where did you park your car when you went up to 1219 and $\frac{1}{2}$ Yesler Way?

A. Across the street.

Q. How did you get it across the street?

A. I made a U-turn in the middle of the block.

Q. You made a U-turn in the middle of the block and parked it across the street? A. Yes, sir.

Q. Then when you left 1219 and $\frac{1}{2}$ Yesler with the defendant, where did you take him?

A. When I——?

Q. As you left 1219 and $\frac{1}{2}$ Yesler, what route did you go?

A. The most direct route, which would be right over Yesler Way.

Q. Did you walk the defendant to your car?

A. I believe we did.

Q. You believe you did walk the defendant to your car?

A. Well, I mean we didn't—he was—he walked by himself, if that is what you mean.

Q. That is what I mean.

A. Yes; he walked by himself. [74]

Q. And he was in your custody at the time?

Testimony of Robert W. Waitt.)

A. Yes, because we was the last two to leave.

Q. What route did you follow after you left the door of 1219 and $\frac{1}{2}$ Yesler Way?

A. We walked across the street to the car.

Q. Across the middle of the block there?

A. Yes.

Q. And your car was practically across the street from 1219 and $\frac{1}{2}$ Yesler?

A. Oh, I wouldn't say it was directly across. It was across the street.

Q. Well, how far north, or I mean east or west of the location of 1219 and $\frac{1}{2}$ was your car?

A. I would say it was angled a little bit east.

Q. Your car was angled a little bit east?

A. No; I mean in comparison to a direct line. If you took a direct line straight across 12th, from 1219 and $\frac{1}{2}$, our car would be a little bit east of that.

Q. In other words, your car was a little bit east of the location of 1219 and $\frac{1}{2}$ Yesler Way?

A. But across the street.

Q. But across the street? A. Yes.

Q. About how far from a direct north and south line; how far east would your car be in that respect?

A. I wouldn't know. It was relatively a short distance; I mean I didn't measure it. I couldn't tell you.

Q. Well, would it be five feet or 100 feet or 500 feet? Just to your best approximation.

A. It wouldn't be over 100 feet.

Testimony of Robert W. Waite.)

Q. About 100 feet?

A. It wouldn't be over 100 feet.

Q. Would it be under 100 feet?

A. Somewheres under.

Q. 75 feet? A. I don't know.

Q. Would it be less than 75 or more?

A. Somewhere under 100 feet.

Q. Well, would it be more than a foot?

A. It would be more than a foot.

Q. All right. About how much now? You are a police officer and you have some idea of distances. Now, give us an approximation. That is all I am asking for.

A. Somewhere between 1 foot and 100 feet. It wasn't over 100, I know that.

Q. Would it be closer to 100 feet than one foot?

A. I don't know.

Q. Would it be closer to one foot than it would to 100 feet?

Mr. Dore: I object to these questions and this [76] line of questioning, Your Honor. I submit that it is not proper cross-examination. There was nothing in the direct examination concerning the location of these automobiles. Furthermore, I do not believe it is material to the crime committed here, as to where these automobiles were.

The Court: The Court has not heard counsel state what the purpose is, but I have seen it happen in many cases in the past where counsel pursued a line of inquiry analagous to this as bearing upon

Testimony of Robert W. Waitt.)

the credibility, the accuracy of the recollection of the witness and other matters affecting the credibility of the witness.

Is that any part of the reason for this line of inquiry?

Mr. Pomeroy: Yes, Your Honor. I believe I am entitled to a fair answer from this officer because he does have a knowledge of distances. They are trained in it and they do know how far they are on the police range when they are shooting, how many feet away, and so forth, and I think I am entitled to a fair answer, how far east of this line that this car was.

The Court: Well, the word "fair,"—of course, you are entitled to an opportunity to make a fair inquiry, but is there any other answer— [77]

Mr. Pomeroy: I think that one phase of my inquiry in this case and one phase of the case is the credibility of these witnesses, and, also, as it will affect argument later as to this motion that I have previously made. The location of this car is very pertinent to that discussion.

The Court: In view of the last statement of counsel, the objection is overruled.

Q. (By Mr. Pomeroy): Now please, Mr. Waitt, give us your best approximation of how far east of a north-south line at 1219 and 1½ Yesler Way your car was parked.

A. I would have to give you an estimate.

Q. That is all I want.

Testimony of Robert W. Waitt.)

A. I would say somewhere around 25 feet.

Q. About 25 feet? A. About 25 feet.

Q. Now, Officer, did you have a search warrant?

A. No.

Q. Did any officer with you have a search warrant? A. No.

Q. Now, do you work with the Federal Bureau of Narcotics as well as the City police department?

A. No.

Q. You have nothing whatever to do with the Federal Bureau [78] of Narcotics; is that what your testimony is?

A. I work for the City. I don't work for the Federals.

Q. I understand that. Do you do any work with the Federal Bureau of Narcotics?

A. In what relationship?

Q. In relation to the cases you make involving narcotics.

A. No. We make our cases ourselves.

Q. You make your cases?

A. We work on our own cases; they have their own cases.

Q. And they have their own cases?

A. Yes.

Q. What do you do with the cases you make?

A. We have two alternatives. We can either turn them over to the Federals after the arrest is made or we can charge them ourselves in our own state courts.

Testimony of Robert W. Waitt.)

Q. Directing your attention to November, 1948, what was your practice and procedure with respect to cooperation with the Federal Bureau of Narcotics?

A. Would you please state that again?

Mr. Pomeroy: Read it back, Mr. Reporter.

(The last question was repeated by the reporter.)

The Court: Do you understand the question?

The Witness: Well, not entirely.

The Court: Are you agreeable to specifying [79] whether or not he operated under any agreement or standing arrangement with them? Is that a part of your inquiry?

Mr. Pomeroy? Yes.

Q. (By Mr. Pomeroy): Did you have a standing arrangement with the Federal Bureau of Narcotics on the handling of narcotic cases?

A. No.

Q. The Seattle city police did not have any standing agreement? A. I didn't have any.

Q. Well, did your department? You are an officer of the Seattle department? A. Yes.

Q. A member of the Felon Squad?

A. Yes.

The Court: To your knowledge.

A. To my knowledge, no.

Mr. Pomeroy: If Your Honor please, I at this time will say that I think I will perhaps forego further examination of this witness in the event that I

Testimony of Robert W. Waitt.)

am permitted to call Captain Morris back for this particular line of inquiry. I thought I could get it from this witness, but apparently I cannot.

The Court: The Court will permit you to call [80] Captain Morris back for further examination, if you wish to do so. But whether you are satisfied with Captain Morris' examination or not, do you excuse this witness from further cross-examination?

Mr. Pomeroy: Yes, Your Honor.

Mr. Dore: I have no further questions of this witness.

The Court: You may step down.

(Witness excused.)

The Court: Do you wish to call him back now?

Mr. Pomeroy: I have no preference about it.

The Court: I thought you wished to do that now.

Mr. Pomeroy: I would like to do it now, if you do not mind.

Mr. Dore: I have no objection.

The Court: Recall Captain Morris now.

Mr. Dore: I would rather have these witnesses remain in attendance until we see how the plaintiff's case goes.

The Court: The witnesses are required to remain in attendance until later excused.

Captain Morris, will you resume the stand for further cross-examination?

(Addressing Mr. Pomeroy): You may resume your Cross-examination. [81]

ROBERT W. MORRIS

having been previously duly sworn, resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Pomeroy:

Q. Captain Morris, did you have any warrant of arrest at the time you made the arrest of Ruis Parker? A. No, sir.

Q. Did you have any search warrant to go into 1219 and 1/2 Yesler Way? A. No.

Q. Did you have any search warrant to go into the apartment known as Apartment B?

A. No, sir.

Q. You were armed with no search warrants at all on that particular evening?

A. That is correct.

Q. Now, can you explain what arrangement you had, if any—working arrangement—with the Federal Bureau of Narcotics in November, 1948?

Mr. Dore: I object to this, Your Honor, as not proper cross-examination, having not been brought out in direct examination.

The Court: The objection is overruled. [82]

A. We have never had any arrangements since I have been in charge of the Felony Squad, which includes narcotics, which has been over a year and a half ago. A year ago last December we started the Felony Squad. During that time about—I don't know the exact number—I would say offhand maybe three-fourths of our cases we turn over to the Fed-

(Testimony of Robert W. Morris.)

erals because it saves us a little work in prosecuting the cases. During that time they have never collaborated or exchanged information or anything else, except in cases of this nature we have turned them over to the Federals to prosecute. That was merely to save us a little work.

Q. What was your regular procedure if you arrested a man on a narcotics charge such as you arrested Ruis Parker in November, 1948? What was your procedure with regard to the Federal Bureau of Narcotics?

A. Well, if we arrested them on a narcotics charge, we would call them up the next day and ask them if they wanted to handle the case, or the day after, and if they didn't we would give it to the State. It didn't make any difference to us, whom we turned them over to. We would call them up the next day and ask if they wanted to handle the case.

The Court: Will you try and repeat word for word and more slowly, your answer? [83]

A. We have no arrangements with the Federal Bureau. The day after we make an arrest, whether by the Felony Squad or anybody else in the police department, sometimes we call up and ask them if they want to adopt the case. And they come down and look over the evidence and decide if they want to adopt it or not.

Q. (By Mr. Pomeroy): Captain Morris, I will ask you whether or not on March 18, 1949, in the United States District Court in this building, in

(Testimony of Robert W. Morris.)

Judge Black's courtroom, in the case of the United States of America versus Alvenia Newman, in a hearing on a motion to suppress evidence, you were asked this question:—this is a question by me, and your answer will also follow, and I am reading now from what I believe to be what the statement was—“By agreement—I will ask you whether or not you are referring to an agreement as to federal officers prosecuting cases that you make? Is there any such agreement?” Your answer to that question was: “I can explain how the situation is. When we make a case, we call up the next day and ask them if they want to take it over, and tell them if they do not we will turn it over to a State court.” Now, is that your answer to the question as given at that time?

A. Well approximately, I imagine. [84] I don't know—was that the way I worded it from the notes?

Q. I am asking you whether or not your recollection is that that statement was made.

A. Well, it sounded very similar to that statement.

Q. And was that statement correct as to your procedure during November of 1948?

A. Well, I don't necessarily always ask them first if they want to handle it and then turn it over to the State. Sometimes we do for no reason at all, turn it over to the State first, but we do usually turn it over to the Federals.

Q. In other words, your procedure, though, Captain Morris, is to call the Federal Bureau of Nar-

(Testimony of Robert W. Morris.)

cotics as soon as you make a case and ask them if they want it? A. The next day, usually.

Q. And then they say whether they want it or do not want it? A. That is right.

Q. That is the situation. And then the officers making the arrest then become federal witnesses on those federal cases, is that right?

A. I don't know about that. What do you mean by "federal witnesses"?—for the Federal Narcotics Bureau?

Q. That is what I mean. That is correct, is it not? [85] A. Yes, sir.

Mr. Pomeroy: That is all.

Mr. Dore: No questions.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Dore: I call Robert R. Musselman.

The Court: Take the witness chair, Mr. Musselman.

ROBERT R. MUSSELMAN

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. State your name, please.

(Testimony of Robert W. Morris.)

A. Robert R. Musselman.

Q. How do you spell your last name, Mr. Musselman?
A. M-u-s-s-e-l-m-a-n.

Q. What is your address or residence?

A. 6542 MacArthur Court.

Q. What is your business or occupation?

A. I am a police officer with the Seattle police department.

Q. How long have you been with the Seattle police department? [86]
A. Four Years.

The Court: Is it Robert L.?

The Witness: Robert R.

The Court: You may inquire.

Q. (By Mr. Dore): How long have you been with them?
A. Four years.

Q. And with what detail are you now working?

A. At the present time I am with the Homicide and Robbery Detail.

Q. I couldn't hear that.

A. I say, at the present time I am with the Homicide and Robbery Detail.

Q. And were you so employed on November the 24th, 1948?

A. At that time I was assigned to the Felon Detail.

Q. Were you working under Captain Morris at that time?

A. He was my commanding officer.

Q. About 9:00 or 9:30 on the evening of Novem-

(Testimony of Robert R. Musselman.)

ber the 24th did you receive orders to proceed to 1219 and 1½ Yesler Way?

A. No, sir. I was told to meet Captain Morris at 12th and Yesler.

Q. At 12th and Yesler? A. Yes, sir.

Q. Who told you that? [87]

A. Captain Morris.

Q. And did you go to 12th and Yesler?

A. I did.

Q. Who was there upon your arrival?

A. Detective Ivy, who was my partner at that time, and myself drove up in our car. Detective Waitt and Zuarri were either there or arrived about the same time. I don't know whether they were there or not.

Q. Was Captain Morris there?

A. I met Captain Morris at the corner immediately upon my arrival.

Q. About how much time did it take you to go from the Seattle police department up to 12th and Yesler?

A. Well, from the time he told us to meet him there, I believe it was—oh, it must have been all of five minutes. We had to draw a car from the motor pool and drive up there. It is not too far.

Q. Now, after you arrived there, what did you do?

A. The Captain led us down to 1219 and 1½ Yesler Way and directed Detective Waitt and I to accompany him.

(Testimony of Robert R. Musselman.)

Q. And did you accompany him?

A. We did.

Q. Where did you go?

A. He opened the door of that address and we went up, I believe, two flights of stairs. [88]

Q. Now, that door was located where?

A. As I recall now, as we stood from the sidewalk, facing the building, it was on the left hand side of the building.

Q. Was the door locked?

A. No, sir; I don't believe it was because he opened the door and we walked in.

Q. How far were you behind him at the time?

A. Well, I followed Detective Waite up the stairs and he followed Captain Morris, and we were all fairly close together. The exact distance I couldn't state.

Q. Well, approximately the distance. I am not asking for the exact distance.

A. Captain Morris' position from my position, I doubt if there was over—if it was over six or eight feet.

Q. After you went up the stairs, where did you go?

A. We went directly to the top of the stairs.

Q. What happened at that time?

A. On the left hand side of the stairways was a door. The Captain called out, "Is anybody home?" I believe he called several times. And he lead the way into the apartment.

(Testimony of Robert R. Musselman.)

Q. Was that door open or closed?

A. I definitely couldn't say. I was behind. I don't know whether the door was open or closed.

Q. Did you see any lights in the apartment there? A. In the apartment itself?

Q. Yes.

A. I don't recall whether the lights in the front of the building were on or not. There was a light on in the bathroom, which I went to eventually.

Q. What happened after you went in?

A. The Captain and Detective Waitt went to a room—went from the living room to the dining room. On the left hand side of the dining room was a door. They opened that door and went in. I continued on through the dining room into the kitchen. I looked around, and on my left I saw a door. That door lead to the bathroom. And I went into the bathroom. There was another door in the bathroom which lead to the defendant's bedroom. I went into the bedroom by that route.

Q. And did you see the defendant there?

A. I did, yes.

Q. Where was he?

A. He was lying on the bed.

Q. Did he say anything?

A. No—not to me, no.

Q. Did he say anything to anybody in your presence?

A. At that time I don't recall any conversation with the [90] defendant.

(Testimony of Robert R. Musselman.)

Q. Now, what occurred after you went into that room?

A. Well, on the bed was an opium smoking outfit; and the defendant, I believe, was told to get up and get dressed.

Q. Who told him that?

A. I believe it was the Captain.

Q. And did he get up and get dressed?

A. Well, he got up and was taken out of the room. Now, I don't know whether he got dressed at that time or not.

Q. Then what occurred?

A. The Captain directed us to search the apartment, which we proceeded to do.

Q. Did you search the apartment?

A. We did, yes.

Q. Did you personally find anything?

A. No, sir.

Q. Now, did you, while you were in the apartment, have any conversation with the defendant?

A. No, I don't believe so.

Q. Were you present at any time anybody else in the apartment had conversation with the defendant?

A. No, sir.

Q. Did the defendant ride in your car down to the police [91] station?

A. No, sir; I don't believe he did.

Mr. Dore: Your witness.

(Testimony of Robert R. Musselman.)

Cross-Examination

By Mr. Pomeroy:

Q. Where did you park your car when you got there?

A. On the corner of 12th and Yesler.

Q. On the corner of 12th and Yesler?

A. Yes, sir.

Q. What corner was it?

A. Well, it would be on the northeast.

Q. On the north——

A. The northeast side of the intersection. I guess it would actually be on 12th Avenue.

Q. Oh, you parked your car on 12th Avenue?

A. Yes.

Q. And how close to the corner did you park the car?

A. I can't recall at this time the exact distance.

Q. Well, would you say it was closer to Yesler Way or the street north?

A. I would say it was closer to Yesler Way.

Q. Would you say it was about in the center of the block?

A. I can't definitely say the exact position the car was in. [92]

Q. You would not say that the car was not in the center of the block, would you?

A. I would neither say the car was in the center of the block or that it was not in the center of the block; I don't know.

Mr. Pomeroy: That is all.

Mr. Dore: No further questions.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Pomeroy: If Your Honor please, I have a witness for the defendant, George Mosler, an attorney, a member of this bar, who must leave for Vancouver at 3:00 o'clock. It is a little out of order, but I would—he is a very short witness and I would like to put his testimony on.

The Court: How many more witnesses does the plaintiff have in this case?

Mr. Dore: There are four more witnesses, Your Honor, but their testimony will be brief.

The Court: Does the government consent that the defendant may call the proposed witness out of order?

Mr. Dore: The government so consents, Your Honor.

The Court: The Court approves, and you may do that, [93] Mr. Pomeroy.

Mr. Pomeroy: Thank you, Your Honor.

GEORGE R. MOSLER

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. Please state your name to the Court?

A. George R. Mosler.

Q. And what is your occupation?

A. I am an attorney at law.

Q. And where do you practice law?

A. In Seattle.

Q. Mr. Mosler, are you familiar with the premises known as 1219 and 1½ Yesler Way?

A. Yes, I am.

Q. Over how long a period of time?

A. Since the date of my birth. It will be 39 years next month.

Q. About 39 years ago. Now, Mr. Moser, did you, yourself, own these premises?

A. Yes, I did.

Q. Until when?

A. Until September of 1945. [94]

Q. And then what did you do with the premises?

A. I made a conditional sale of those buildings to Robert D. Lee.

Q. And are you still familiar with the premises?

A. Yes, I am very familiar with them.

Q. And this 1219 and 1½ Yesler Way, is it an apartment building?

(Testimony of George R. Mosler.)

A. It is the front of an apartment building.

Q. It is what?

A. It is the front door—the front entrance of an apartment building.

Q. And how many apartments are there in there?

A. 1219 and 1½ has two apartments.

Q. And where are those apartments located with reference to the building?

A. They are on the second and third floors of this building. If I might describe the building—

Q. You may briefly do so.

A. It is a rather unusual type of building. 1219 and 1½ Yesler Way is what we call—well, the lower portion, or the street portion, has a store, which is now occupied by a lundry and dry cleaner, and 1219 and 1½ describes the two street apartments. There are six more units in the same building in the rear which have separate entrances other than 1219 and 1½. [95] 1219 and 1½ has this front entrance and its own rear entrance.

Q. And then it has an apartment on the second floor and an apartment on the third floor?

A. That is correct.

Q. Those are the only apartments that can be entered through this door at 1219 and 1½ Yesler?

A. That is correct.

Q. Do you know the defendant in this case, Ruis Parker?

A. Yes, I do.

Q. Has he been a tenant in that building?

(Testimony of George R. Mosler.)

A. For many years.

Q. And he was one of your tenants, is that right? A. He was a tenant of mine.

Q. Now, can you tell this Court what the usual practice was concerning the front door known as 1219 and 1½ Wesler Way?

A. The usual practice——

Mr. Dore: I object to this, Your Honor, until he fixes the time.

Q. During the period of—well, 1948—during 1948.

The Court: Do you ask him during the whole of 1948?

Q. Well, during November of 1948, what was the practice concerning the front door? [96]

A. During November of 1948 the practice was to keep that door locked at all times, the keys being under the control of the manager of the apartment house, the owner of the building and the tenants of apartments B and C.

Q. That would be the two tenants?

A. That would be the two tenants.

Q. And is that any different than the procedure you had in that building during the time you have known it? A. There was no difference.

Q. That has always been the practice?

A. That has always been the practice.

Mr. Pomeroy: You may inquire.

(Testimony of George R. Mosler.)

Cross-Examination

By Mr. Dore:

Q. Where do you now live?

A. I live at 512 Wellington Avenue, Seattle.

Q. Where is that in relation to 1219 and 1/2 Yesler Way?

A. That is approximately two to two and one-half miles east of 1219 and 1/2 Yesler Way.

Q. Do you and your family live there?

A. Yes; for many years.

Q. And do you work during the day?

A. Yes. [97]

Q. What are your working hours?

A. My working hours are irregular, Counsel. I am my own employer, but I generally—I am at my office from the hour of 9:00 until 4:30, unless I am engaged in Court.

Q. Where is your office located?

A. 2207 Northern Life Tower.

Q. And how far is that from 1219 and 1/2 Yesler Way?

A. I would approximate that at one and one-half miles.

Q. And what is your custom and procedure as to going home after the working day?

A. I either drive home in my automobile or else I will take a Number 2 Madrona bus to the end of the line where my wife will meet me with her automobile and take me home.

(Testimony of George R. Mosler.)

Q. And when you drive home, what is your customary route?

A. I have no customary route, Counsel. I do not like to get in the rut and I either go up Seneca Street and out East Union to 34th and north to Madrona Drive and east to the Boulevard, south three blocks, up Wellington Avenue, or else I will drive up Seneca Street to Boren Avenue, proceed south to Yesler Way, out Yesler Way to 32nd North and east to my home.

Q. Now, when did you sell this property to Mr. Lee?

A. September of 1945. I think it was within a day or two [98] either way of V-J Day.

Q. Now, since that time, considering your testimony that was given here concerning your working hours, in fact, the route that you pursued toward home, it isn't customary for you to visit 1219 and 1½ Yesler Way, is it?

A. I do from time to time—for very obvious reasons.

Q. What are the reasons?

A. I still own the fee of that property, and I have a considerable sum of money due me there.

Q. How often during a month would you say that you stop in there?

A. Oh, I couldn't say by the month. I would say I would stop in there from 12 to 15 times a year.

Q. Are you familiar with the present lock upon the door?

(Testimony of George R. Mosler.)

A. Superficially I am, Counsel.

Q. What do you mean by that?

A. I mean the outer portion of the lock, which looks the same as it has always appeared.

Q. Now, were you familiar with the lock and the workings of the lock on November the 24th, 1948?

A. No, I would not say that I was accurately advised of that.

Q. Now, as to your knowledge concerning that lock, when you last were there and acquainted with the lock, was it an automatic lock? [99]

A. It was what I would call a Yale lock. I do not know whether Yale was the manufacturer's name, but it is a Yale type lock.

Q. Now, to your knowledge, on November 24th, 1948, or thereabouts, was there any automatic arm or spring or such contrivance which automatically closed the door if it was opened?

A. Yes; there was a spring. To the best of my knowledge and belief, there was a spring.

Q. Where was that located?

A. It would be on the upper inside portion of the door.

Q. Have you recently observed the door?

A. Not for the last three or four months have I made a close observation of that door.

Q. There is no spring there now, is there?

A. I do not know, Counsel.

Mr. Dore: That is all.

(Testimony of George R. Mosler.)

Mr. Pomeroy: No questions. You may step down.

The Witness: May I be excused?

The Court: The witness asks to be permanently excused, as the Court understands the request. Is there any objection?

Mr. Pomeroy: I ask that he be permitted to do so.

Mr. Dore: No objection.

The Court: The witness is permanently discharged [100] from attending the trial of this case.

(Witness excused.)

Mr. Dore: Henry L. Giordano.

HENRY L. GIORDANO

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. State your name.

A. Henry L. Giordano.

Q. And what is your residence?

A. Seattle, Washington.

Q. And your address?

A. 8203 41st Northeast.

Q. And what is your business?

(Testimony of Henry L. Giordano.)

A. Narcotic agent with the Bureau of Narcotics, Seattle, Washington.

Q. Were you so employed on or about November the 24th, 1948? A. Yes, sir.

Q. And did you have occasion subsequent to that date, or on or about that date, to make an investigation of the Ruis Parker case? [101]

A. Yes. On November 26th, 1948, I was instructed by Mr. Chrysler to go to the police station and see one of the police officers down there in regards to some person who had been arrested.

Q. What did you do by way of investigation?—

A. I went to the police station.

Q. —that is, without relating any conversations with anybody.

A. Yes. I went to the police station and met one of the officers there, and then I went to the property room, and I obtained from the property room evidence from the property clerk, Mr. O'Leary. After I obtained that evidence, I went up and talked to Mr. Parker and questioned him in regards to this evidence I had.

Q. Where was Mr. Parker at the time?

A. He was in the City jail.

Q. And what date was that?

A. That was on the 26th of November, 1948.

Q. And what conversation did you have with him at that time?

A. I had some—an opium pipe and parapher-

(Testimony of Henry L. Giordano.)

nalina, and a jar of opium, and some Yen Shee in my possession then that I obtained from the property clerk, and I asked him whose property it was. I understood——

Q. At this time I might ask you to direct your attention [102] to Plaintiff's Exhibits 1 and 2, and the envelope there is Plaintiff's Exhibit 3 for identification. Are those the objects of which you speak at this time?

A. Yes. All of these exhibits were in my possession at that time.

Q. And what conversation did you have with Mr. Parker? What was said at that time?

A. Well, I asked him whose opium it was that was found in his apartment. And he said that it was his. And I asked him where he had purchased it, and he said he bought it from a chinaman. I asked him what the name of this chinese person was, and he said he didn't know the name. I asked him how long he had been using narcotics, and he said he had been using it about 15 months. And I asked how much he was paying for the opium, and he said that it was costing him a hundred dollars a jar and that he used about a jar every five days. I asked him what happened on the evening that the officers found this evidence, and he said he was in bed at the time and the first thing he knew the officers were in the room; and they found this platter here—plate—with all the smoking equipment and the opium on it.

(Testimony of Henry L. Giordano.)

Q. Did you have any further conversation with him at that time? [103]

A. That's all—I think that's all. I can't recall any other.

Q. Did you, after that date, have a conversation with him concerning this?

A. No; I think that's the only occasion that I talked to him.

Q. That is the only time that you talked to him?

A. Yes.

Q. Now, what did you do with these items here?

A. I brought them back to the office. And those items that contain narcotics, such as the smoking opium and the Yen Shee, I weighed them and sealed them in this envelope. That was—one jar had smoking opium.

Q. You sealed them in the envelope marked Plaintiff's Exhibit 3 for identification?

A. Two—Exhibit 2.

The Court: Look at it and see if the clerk's mark is there.

The Witness: It is marked 2.

Mr. Dore: It should be 3, Your Honor.

The Court: That is my understanding. My notes indicate that it should be marked Plaintiff's Exhibit 3. Six jars and one small tin are the things that make up Plaintiff's Exhibit 2, according to my notes.

Mr. Dore: Yes. [104]

(Testimony of Henry L. Giordano.)

The Court: The wrapper, it is Plaintiff's 3 for identification.

Q. (By Mr. Dore): Which envelope was it, Mr. Giordano?

A. It was Exhibit 2. The one marked Exhibit 3 is the envelope that the police officers had placed this evidence in. And I had opened this and removed those items that contained a narcotic drug and placed them in this envelope along with this one folded up. Exhibit 2—they were all eventually placed in Exhibit 2.

Q. What did you do with the other equipment?

A. The other equipment I wrapped up, and sealed, and kept it in my possession.

Q. And it has been in your possession ever since—until trial day? A. Yes, sir.

Q. Now, what did you do after that?

A. Well, then I took the evidence that I placed in Plaintiff's Exhibit 2, the jars, six jars and the tin, and took them to Mr. Hugo Ringstrom, the United States chemist.

Q. Where was his office?

A. In the Federal Office Building.

Q. What day did you take it to him?

A. I don't recall the day that I took it to him. [105]

Q. Did you request an analysis of the substance at that time? A. Yes, sir.

Q. Now, in weighing the narcotics—you say that you weighed the narcotics—what weight did you discover?

(Testimony of Henry L. Giordano.)

A. Well, on the jar containing the opium, it was approximately 292 grains of smoking opium, and the tin, "Nature's Remedy tin, it contained about 17 grains of Yen Shee; and then there was one jar that had some Yen Shee in it. It was 50 grains of Yen Shee in that one jar, and another jar had eight grains of Yen Shee. Each of those were enclosed in some newspaper.

Q. What was the total amount of Yen Shee that was weighed? A. It would be about 75 grains.

Q. And did you turn the Yen Shee over to Hugo Ringstrom, also? A. Yes, sir.

Q. Are you familiar with the difference between smoking and non-smoking opium?

A. Yes, sir.

Q. What is the difference?

A. The non-smoking is opium that has not been prepared. It is usually in a crude form, brick form, or a solid form.

Q. How about the smoking opium? [106]

A. The smoking opium is like an extract, liquid partially—kind of a heavy syrupy form.

Mr. Dore: Your witness.

Mr. Pomeroy: No questions.

(Witness excused.)

Mr. Dore: I call Hugo Ringstrom.

The Court: As I understand it, the defendant does not wish to cross-examine Mr. Giordano.

Mr. Pomeroy: I stated, "No questions."

The Court: Call your next witness.

HUGO RINGSTROM

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. State your full name, please.

A. Hugo Ringstrom.

Q. And where do you live, sir?

A. Seattle, Washington.

Q. What is your business or occupation?

A. Chemist for the Alcohol Tax Unit, federal government.

Q. How long have you been a chemist for the government? A. 26 years. [107]

Q. And were you a chemist for private industry at any time? A. Yes, sir.

Q. How many years? A. Two years.

Mr. Pomeroy: I will stipulate as to the witness' qualifications.

Mr. Dore: I believe the Court is familiar with his qualifications, also, Your Honor.

The Court: I am. As far as the Court is concerned, that need not be proved.

Q. (By Mr. Dore): Now, in the course of your work, were you called upon to make an analysis of certain evidence in regard to the United States of America versus Ruis Parker? A. Yes, sir.

Q. Before you there are Plaintiff's Exhibits 2

(Testimony of Hugo Ringstrom.)

and 3. Did you make an analysis of any of those items or substances before you?

A. Well, I made an examination of the—the envelope is marked as Exhibit 2.

Q. That is the envelope that contained the six jars and the small tin? A. Yes, sir.

Q. And at whose request did you make this examination? [108]

A. The bureau of Narcotics.

Q. What agent or representative of that bureau?

A. Narcotic Agent Giordano.

Q. And when did he ask you to make that analysis? A. December the 9th, 1948?

Q. Where was that?

A. In the Alcohol Tax Unit laboratory, Seattle, Washington.

Q. And did you make a chemical analysis of the substances given to you by Mr. Giordano?

A. Yes, sir.

Q. And when did you make that analysis?

A. Oh, a day or two after he brought it down.

Q. What were your findings?

A. This jar here contained approximately 150 grains of smoking opium.

Q. Can you identify that jar by any marking, to make it more definite?

A. I don't see any marks except the initials on it.

Q. Is that how you identify it as being the jar that contained the opium?

A. My initials, and the figure "150 grains."

(Testimony of Hugo Ringstrom.)

Q. What are your initials, please?

A. H. R.

The Court: Is it a part of some numbered exhibit? [109]

The Witness: It was contained in this envelope—Exhibit 2.

Q. You say there were 100 grains in this jar?

A. 150.

Q. 150? A. Approximately.

Q. And as to the other jars or tins there?

A. The tin contained 50 grains of Yen Shee, and this jar contained 17 grains of Yen Shee.

Q. How was that jar marked?

A. With my initials and 17 grains. And this jar contained eight grains of Yen Shee. And these other three jars contained traces of smoking opium in them.

Q. Was there any other substance there that you made an analysis of?

A. Not that I recall.

Q. What did you do with that equipment there, or substance and those items after you had analyzed them?

A. I kept them in my possession until this morning.

Q. Those are the items that were in the envelope marked Plaintiff's Exhibit 2, is that correct?

A. Yes, sir.

Mr. Dore: Your witness.

Mr. Pomeroy: No questions.

The Court: You may be excused from the stand. [110]

(Witness excused.)

Mr. Dore: I call Joseph B. Goode.

JOSEPH B. GOODE

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. State your full name, please, Mr. Goode?

A. Joseph B. Goode.

Q. And where do you live, sir?

A. Seattle.

Q. What is your business or occupation?

A. Federal Narcotic Agent.

Q. And I will ask you if you had any occasion to investigate the case of the United States of America versus Ruis Parker? A. I did.

Q. And when was that?

A. Sometime in May; I don't remember the date.

Q. At whose request?

A. The district attorney, Mr. Vaughn Evans.

Q. And what did you do by way of investigation?

A. We went down to the address on Yesler Way.

(Testimony of Joseph B. Goode.)

Q. Here in the City of Seattle? [111]

A. Yes, sir; 1219 and 1½.

Q. What did you do there?

A. We attempted to see Mr. Lee, and we could not find him at home there—I mean at that place.

Q. Mr. Lee is the landlord of that place?

A. That is right.

Q. And then what did you do?

A. We went over to 1635 King Street.

Q. Did you speak to Mr. Lee there?

A. He was there.

Q. And was Ruis Parker there?

A. No, sir.

Q. Now, what did you do after speaking to Mr. Lee?

A. We talked to him about the doorway that went up in his apartment which he owned.

The Court: Which doorway? Where?

The Witness: At 1219 and 1½.

Q. Now, did you personally observe that doorway? A. I did from the outside.

Q. Did you open the door?

A. No, I did not.

Q. Was the door locked or unlocked when you were there?

A. It was locked at that time, sir.

Q. It was locked at that time?

A. Yes, sir. [112]

(Testimony of Joseph B. Goode.)

Q. And have you ever observed that door since that time?

A. I have been there again. He's got the two doorways at 1219 and $\frac{1}{2}$ and 1231.

The Court: What street?

The Witness: At Yesler Way.

Q. I am speaking of the doorway at 1219 and $\frac{1}{2}$ Yesler Way. A. It was locked.

Q. And have you ever observed it since that time when you first saw it?

A. No, I have not—except last night.

Q. What was the condition of the door when you observed it last night? A. It was locked.

Q. It was locked at that time?

A. Yes, sir.

Q. And have you ever talked to Ruis Parker?

A. I have not.

Q. What else did you do by way of investigating?

A. The only thing in the investigation, we talked to Mr. Lee, and he explained the lock on this door as a similar lock that was on the other apartment.

Q. What type of lock was on his door?

A. One of those snap locks on the inside. You could turn it off, and when you turn it off the lock would [113] be open, you see.

Q. In other words, there is a little latch on the side there? A. That is right; yes.

Q. And do you turn it or is it the type that goes up or down?

(Testimony of Joseph B. Goode.)

Mr. Pomeroy: May I ask, are you describing the lock at 1219 and 1/2 Yesler Way?

The Witness: No; describing the lock Mr. Lee showed me as a similar lock at 1219 and 1/2 Yesler Way.

Mr. Pomeroy: I will object to that.

The Court: Sustained.

Mr. Dore: No further questions.

Mr. Pomeroy: No questions.

The Court: Step down.

(Witness Excused)

The Court: Call your next witness.

Mr. Dore: Mr. O'Leary.

THOMAS FRANCIS O'LEARY

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. State your full name, please, Mr. O'Leary.

A. Thomas Francis O'Leary.

The Court: Pardon?

The Witness: Thomas Francis O'Leary.

Q. And where do you live?

A. At 2017 11th Avenue North.

Q. And what is your business?

A. Police officer, City of Seattle.

(Testimony of Thomas Francis O'Leary.)

Q. How long have you been so employed?

A. Six years past.

Q. And what are your duties?

A. I am in charge of the property room.

Q. And being in charge of the property room, what does that encompass? What is the nature of the duty?

A. Well, we handle all police supplies and equipment.

Q. Now, you have before you——

The Court: You have not said anything material yet. I do not believe there is an issue——

Mr. Dore: I just wanted him to identify the envelope, Your Honor.

The Court: Well, he has not said that his duty encompasses anything that is here involved yet, Mr. Dore. Do you wish to give him an opportunity to do that? I did not hear him say that——

Mr. Dore: I want him to refer to the envelope, Your Honor, Plaintiff's Exhibit for identification No. 3. [115]

The Court: Well, I was calling your attention to the fact that so far nothing yet has been said by this witness as to what his usual duties are; nothing has been said which encompasses any duty respecting these exhibits.

Mr. Dore: That is what I want to do now, Your Honor.

The Court: All right; you may proceed.

Q. (By Mr. Dore): There is an envelope there before you.

(Testimony of Thomas Francis O'Leary.)

Mr. Dore: I wish somebody would point it out to him.

The Court: Look at the envelope before you.

(Bailiff indicates envelope in question to witness.)

Q. (By Mr. Dore): Can you identify that envelope?

Mr. Pomeroy: Well, if Your Honor please, I hate to object in this particular matter because I do not think it is important, but apparently there is a—well, an envelope was picked up and handed to him and it is not referred to by number.

Mr. Dore: I referred to it as Number 3, Your Honor.

The Court: Very well; let the record—let me see that. Let the record show that the witness' attention has been called to Plaintiff's Exhibit No. 3 for identification.

A. This an envelope that we use for narcotics; and it is given to us, I believe, by the Treasury Department to put narcotics in.

Q. Now, on or about November the 24th, 1948, did you personally receive any of these items there, or any of the envelopes containing those items?

A. I received the items and placed them in the envelope.

Q. You did? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. Did you initial, or make any marking of any

(Testimony of Thomas Francis O'Leary.)

sort, or anything else on the envelope to show that you did that?

A. Yes. We are instructed to not the time we receive it.

Q. Is that so noted? A. Yes, it is.

Q. Where?

A. On the back of the envelope.

Q. And what is stated there? What is written?

A. Received November 24, 1948, at 11:25 p.m., and it is signed by me.

Mr. Dore: Your witness. [117]

Mr. Pomeroy: No questions.

Mr. Dore: That is all.

The Court: Step down.

(Witness Excused)

The Court: Call your next witness.

Mr. Dore: That is the government's case, your Honor.

The Court: Well, I call the government's counsel's attention to the fact that there are several exhibits which have been referred to.

Mr. Dore: I will offer those exhibits in evidence, Your Honor, at this time.

The Court: Plaintiff's Exhibit 1 has not yet been offered. Plaintiff's Exhibit 2 has not yet been offered. Plaintiff's Exhibit 3 has not been offered, unless it was in the last word or two.

Mr. Dore: I will at this time offer them, Your Honor, with the Court's permission.

Mr. Pomeroy: Objected to, if Your Honor

please, on the grounds that they were obtained by unlawful search and seizure.

The Court: Do you wish to call the Court's attention to any decision which you think supports your theory?

Mr. Pomeroy: Yes. [118]

(Argument by counsel)

The Court: The objection to the offer of these exhibits, 1, 2 and 3, is overruled and each of those exhibits is now admitted in evidence.

(Plaintiff's Exhibit 1, 2 and 3 admitted in evidence.)

Mr. Dore: The government rests at this time, Your Honor.

The Court: Plaintiff rests. The defendant may now proceed.

Mr. Pomeroy: I will call Lottie Morgan.

LOTTIE MORGAN

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. Please state your name to the Court.

A. Lottie Morgan.

Q. And where do you live, Mrs. Morgan?

(Testimony of Lottie Morgan.)

A. 1219 and 1½ Yesler—Apartment A.

Q. And where is your apartment located in the building? A. The second floor.

Q. How many apartments are there in the building? A. Two. [119]

Q. And where is the other apartment—not yours—located? A. The third floor.

Q. How long have you lived at that address?

A. Eight years.

Q. Do you know the occupants of the other apartment? A. Do I know——

Q. Do you know who lives in the other apartment? A. Yes, I do.

Q. And who is that? A. Mr. Parker.

Q. Ruis Parker, the defendant in this case?

A. The defendant.

Q. And were you a tenant there in November, 1948? A. I was.

Q. And was Mr. Parker a tenant in the other apartment on that same date? A. He was.

Q. In November, 1948? A. He was.

Q. What is the situation with regard to the front door of the apartment building; is that kept locked or is it kept unlocked?

A. It is kept locked at all times.

Q. And has that been true during your entire tenancy there? [120] A. It has.

Q. And do you know who has keys to that door?

A. Mr. Parker and myself.

(Testimony of Lottie Morgan.)

Q. Anyone else? The manager of the building?

A. The manager of the building, yes. No one else.

Q. At any time during the period you lived there has that door been unlocked? A. Never.

Mr. Pomeroy: You may inquire.

Cross-Examination

By Mr. Dore:

Q. Where do you live in relation to the apartment of Ruis Parker?

A. 1219 and 1/2 Yesler Way, Apartment A, the second floor.

Q. They are both on the second floor there?

A. No.

Q. Apartments A and B are together on the second floor? A. Not the second floor, no.

Q. Where is Apartment B?

A. On the third floor.

Q. On the third floor? A. Yes.

Q. And you are beneath his apartment?

A. That is right. [121]

Q. Now, are you in your apartment at all times during the day?

A. Not at all times. I work.

Q. Where do you work?

A. I do house work.

Q. How many days a week do you work?

(Testimony of Lottie Morgan.)

A. At the time of November I were doing maid work at night.

Q. At night.

A. I go to work at 4:00 o'clock in the evening.

Q. When did you leave there in the evening?

A. At 4:00 o'clock.

Q. At 4:00 o'clock. And when did you return?

A. I returned the next morning at 6:00.

Q. So you were not there between 4:00 in the afternoon and 6:00 the next morning, is that true?

A. That is true.

Q. So that you do not really know whether that door was locked or not between those hours, do you?

A. It was locked when I left and locked when I returned.

Q. But you do not know the condition of the lock during the time you were gone, do you?

A. No, I couldn't during the time I am gone because nobody else is supposed to have a key but Mr. Parker and myself. [122]

Q. Now, what kind of a lock is it?

A. A Yale lock.

Q. Is there a latch device on the lock by which you can either leave the lock unlocked or cause it to lock?

A. No. When you open it, it slams itself, but it doesn't have one of those things that—like those doors in the other room.

Q. Well, you are speaking of some automatic device up top?

(Testimony of Lottie Morgan.)

A. Yes. No, it doesn't have an automatic device.

Q. It has no automatic release? A. No.

Q. Or closing device? A. No.

Q. Does it have a spring?

A. When you open the door, it will close before you can step in it if you are not careful.

Q. Now, you say there is no automatic device on the door? A. No.

Q. Now, I am speaking of—my question was addressed to the lock itself. Is there any small latch device on the lock itself which when turned or pushed—— A. That can be turned off and on?

Q. Yes. A. Yes, there is. [123]

Q. Were you there with the police officers on November the 24th? A. No, I wasn't.

Mr. Dore: That is all.

Redirect Examination

By Mr. Pomeroy:

Q. Have you ever known that device, to leave the door unlocked, to be used? A. Never.

Mr. Pomeroy: That is all. You may step down.

(Witness Excused)

Mr. Pomeroy: Robert Lee.

ROBERT DeSHAY LEE

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. Will you state your name to the Court, please? A. Robert DeShay Lee.

Q. And where do you live, Mr. Lee.

A. 1635 King Street.

Q. And are you the owner of the premises known as [124] 1219 and 1½ Yesler Way?

A. I am.

Q. How long have you been the owner of those premises? A. The 10th of September, 1945.

Q. That is when you bought them?

A. That's when I bought them.

Q. And you have been the landlord there ever since, is that correct? A. Yes, sir.

Q. That part of the building known as 1219 and 1½ Yesler Way, how many apartments does that contain? A. That contains nine apartments.

Q. The door known as 1219 and 1½ Yesler Way, how many apartments can be reached through that door? A. Two.

Q. And what apartments are they?

A. A and B.

Q. And that's the only two apartments that you go to through that door, is that right?

A. That is right.

(Testimony of Robert DeShay Lee.)

Q. And who lives in those apartments and did live there in November, 1948?

A. November, 1948?

Q. Yes.

A. Mr. Ruis Parker lives in Apartment B.

Q. And who lives in Apartment A?

A. Mrs. Morgan.

Q. What was the situation with regard to the front door of that place where those two tenants live known as 1219 and 1½ Yesler Way with regard to whether or not it was kept locked or unlocked?

A. Well, it was locked. It was kept locked; yes, sir.

Q. It was kept locked all the time?

A. It was customary that the door be locked all the time.

Q. Do you know of any time when the door was unlocked?

A. No, I don't. You see, I don't live down there and the door is locked at all times, so far as I know.

Q. Who has the key to that door?

A. Well, the only person who has got a key to that door is Mr. Parker, Mrs. Morgan and the caretaker.

Q. And that is all? A. That is all.

Mr. Pomeroy: You may inquire.

Cross-Examination

By Mr. Dore:

Q. You are the landlord of this apartment, is that true? A. Yes, sir.

(Testimony of Robert DeShay Lee.)

Q. Do you live there at those apartments?

A. No, sir. [126]

Q. Where do you live?

A. 1635 King Street.

Q. How far is that from 1219 and $\frac{1}{2}$?

A. Oh, that is seven or eight blocks.

Q. Now, speaking of the door, the street door of 1219 $\frac{1}{2}$, does it have any automatic closing device, any springs or levers on it that causes the door to close?

A. No, I don't think it has a spring on it because—that causes it to close, but the door is a slanting like that. (Indicating) You can open the door and it will close back itself.

Q. I see. Now, speaking of the lock on that door, what kind of a lock is it?

A. It is what you might call a night latch, a slam lock. After the door shuts, the lock will automatically lock itself.

Q. Now, is there any small latch or device on that lock which when turned or pushed will cause the lock not to lock, or vice versa?

A. All night latches have a device on them that you can pull up and cause them not to lock.

Q. Were you there on November the 24th, at the time the police officers entered?

A. No, I wasn't.

Mr. Dore: That is all. [127]

Mr. Pomeroy: You may step down.

(Witness Excused)

The Court: Call your next witness.

Mr. Pomeroy: William Hawker.

WILLIAM J. HAWKER

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. State your name, please, for the Court.

A. William J. Hawker.

Q. And where do you live, Mr. Hawker?

A. 109 12th Avenue.

Q. 109 12th Avenue? A. Yes, sir.

Q. And were you living there on November 24th, 1948? A. Yes, sir.

Q. How long have you lived in Seattle, Mr. Hawker? A. I have been here about 35 years.

Q. And what business do you have?

A. I haven't any business now. I steamboated out of here, that is, you know, in the steward department. I railroaded out of here and—you know, followed [128] cooking and table waiting and such as that.

Q. And do you own any property here?

A. Yes, sir.

Q. What property do you own?

A. 109 12th Avenue.

Q. Where you live? A. Yes, sir.

(Testimony of William J. Hawker.)

Q. How long have you owned that property?

A. I bought it in the fall of '42, I think it were.

Q. All right. Now, Mr. Hawker—

Mr. Pomeroy: If Your Honor please, I would like to show him that map.

The Court: You may do that. Both counsels may approach the witness.

Q. (By Mr. Pomeroy): I am showing you what is marked as Defendant's Exhibit A-2 for identification which purports to be a map of the general area around where you live and where Yesler Way is at 12th Avenue and 14th Avenue. Do you recognize the streets as they are cut off there?

A. Right.

Q. 12th Avenue is right here and Yesler is here and here is 14th. Yes, sir.

Q. Now, where is your home with relation to this Exhibit [129] A-2? Could you make a little mark? And make that a "J."

A. Well, this is Yesler Way here.

Q. No, here is Yesler.

A. If that is Yesler Way here, I live right off of Yesler Way on this side, I would say. I live on the left hand side of the street going that way.

The Court: Going that way! What direction?

Q. He is indicating north.

A. Well, I don't know whether you would say north or not, but I know it is going direct this way, like you were going downtown.

(Testimony of William J. Hawker.)

The Court: Downtown? Going westerly from your place toward the waterfront?

The Witness: No. I live on 12th Avenue. Here is 12th Avenue right here. I live right there. It would be going down that way. There is a steam bath on this corner and I live at the next door.

Q. All right. Now, looking at this exhibit again, Mr. Hawker, this is Yesler Way and this is 12th Avenue. A. I understand that.

Q. Now, you say you live on this side of 12th Avenue?

A. I do—the left hand side going this way. (Indicating).

Q. Do you know on this map where Ruis Parker lives?

A. He lives on Yesler Way on the right hand side of the [130] street going towards 14th Street.

Q. Going towards 14th. Now, directing your attention to an item, on November 24th, 1948, did you see Ruis Parker on that night? A. I did.

Q. And where'did you see him?

A. He was on the opposite side of the street to me.

Q. And where were you?

A. I was on the same side of the street that I lived on, and I could look across the street and see him, and I knowed him.

Q. And he was alone or with someone?

A. There was five men with him. There was three with him and there—there was five alto-

(Testimony of William J. Hawker.)

gether; three with him. And they carried him to a car and they put him in the car—at least he got in the car.

Q. Where was that car they took him to?

A. They took him on the right hand side of the street going out—going towards Fir Street.

Q. Going towards Fir Street? A. Yes, sir.

Q. On what street is that?—12th and——

A. That is 12th and Fir.

Q. And would you say that was in the center of the block or at the end of the block or—— [131]

A. Where they put him in the car was about in the center of the block, near where there is a barber—a Japanese barber shop and a Japanese flower—where they sell flowers at.

Q. That is between Yesler and Fir on 12th Avenue? A. Yes.

Q. About what time of the evening was that, do you know?

A. Well, I left 662 Jackson Street, the Elks Club, a little after 10:00 o'clock and I guess it was about 10:30.

Q. About 10:30?

A. I would judge that is what it was.

Q. And how long did you stand there watching Parker and these five men.

A. I watched them until they got in the car. And the other two, they went up to Fir and they disappeared. I don't know where they went.

(Testimony of William J. Hawker.)

Q. Two of them went up to Fir,—that is, two white fellows?

A. They were all white except Parker.

Mr. Pomeroy: You may inquire.

Mr. Dore: I have no questions.

Mr. Pomeroy: You may step down.

The Court: You may be excused from the witness chair.

(Witness excused.) [132]

The Court: Call your next witness.

Mr. Pomeroy: Ruis Parker.

RUIS PARKER

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. State your name to the Court.

A. Ruis Parker.

Q. And you are the defendant in this action?

A. Yes, sir.

Q. How long have you lived at 1219 and 1/2 Yesler Way? A. Nine years.

Q. And how long has Lottie Morgan lived there in Apartment B?

A. Just about the same length of time, I think.

Q. Directing your attention to November 24th,

(Testimony of Ruis Parker.)

1948, what was the condition as to this front door to 1219 and 1/2 Yesler Way; was it locked or unlocked?

A. Well, I don't—I came in, in the morning, at 10:00 o'clock, and it was locked, and I went to my apartment and I slept all day and I never came out any more.

Q. In other words, you went to your apartment on the morning of the 24th, about 10:00 in the morning, and [133] remained in your apartment all day long, is that right? A. That's right.

Q. And the door was locked when you came in?

A. It was.

Q. And did you lock it after you came in or close it? A. It just automatically locks.

Q. I see. Do you know of any time you have lived there that the door has ever been unlocked?

A. Not since I have been there.

Q. And are there locks also on the door, to your apartment? A. There is.

Q. There is a lock on that door?

A. A spring lock.

Q. And on the day of November 24th, 1948, how was the lock on that door; was that locked or unlocked? A. It was locked.

Q. And it had been locked, had it, all day?

A. I hadn't been out all day. I locked it when I came in.

Q. And is there any time during the nine years

(Testimony of Ruis Parker.)

that you have lived there that you ever found that front door unlocked?

A. In the morning they used to have a houseman or janitor, I guess you would call him, who cleaned the halls, and [134] when he cleaned the halls, because he didn't have a key, he would leave the front door open, propped open because it was the only way he could keep it open in mopping out. That was the only time it was ever kept opened, when he was mopping the hall.

Q. Was he doing that in November, 1948?

A. No, sir.

Q. When was it he was doing that?

A. Well, he did it in the morning, but it wasn't that morning.

Q. It was not that morning?

A. No. I don't think they have a schedule now. I don't know what the schedule is. I don't think they have one now.

Q. On the evening of November 24th you were arrested by the officers who testified here, is that correct?

A. Yes, sir.

Q. And when you were arrested, where did they take you after you left the apartment?

A. To the police station.

Q. Well, I know, but tell the Court the route of your going to this automobile that they took you down to the police station in. Where did you go?

A. After they finished searching me, they took the handcuffs off me and told me to put my clothes

(Testimony of Ruis Parker.)

on, and after [135] that we all left the apartment together and came down the stairs, and I think Captain Morris was in the lead, and all of us went to 12th and Yesler Way, to the corner, and turned right and waited for the small light. Oh, it was a matter of 10 or 15 seconds and then we crossed Yesler Way and went North on 12th Avenue to, oh, I would say 150 feet north of Yesler Way. And three officers put me in the car and the other two proceeded north.

Q. Now, Mr. Parker, I am showing you what is marked for identification as Defendant's Exhibit A-2. You know what this is, do you not?

A. Yes, I do.

Q. And you have seen it here in court before?

A. Yes, sir.

Q. And, you see, that "B" on there designates the place where you live.

A. Yes, sir.

Q. Now, will you step over here and make a line showing the route which you took with the officers after leaving 1219 and $\frac{1}{2}$ Yesler Way and then where you got into the automobile to go to the police station?

A. After we came out the door, they brought me down this side.

Q. Make an ink line. [136]

A. (Witness complies.) We came down to the corner and then this way to—I would say about there.

(Testimony of Ruis Parker.)

Q. Now, make a little round mark there.

A. (Witness complies.)

Q. And that is supposed to be the place where you got into the car to go to the police station?

A. Yes.

Q. Now, will you mark that "K"?

A. (Witness complies.)

Q. And the line which reads from "B" to "K" is the line that you have made which designates the route which was followed by you and the five police officers to the car which took you to the police station, is that right? A. That is true.

Q. Had anyone visited you the day of November 24, 1948? A. No, sir.

Q. You had been in this room all alone all that day, is that right? A. All day.

Q. Since 10:00 o'clock in the morning until the officers came? A. That is true.

Q. And the door, the front door to your apartment had never been opened by you or anybody else? [137] A. Not all day.

Q. It had been locked all day?

A. I awoke at 7:30 and got up and made coffee.

Q. Did you go back to bed?

A. No. I put this on the bed, (Indicating) and I know my door was locked at that time.

Q. I see.

Mr. Pomeroy: You may inquire.

(Testimony of Ruis Parker.)

Cross-Examination

By Mr. Dore:

Q. When did you stop smoking opium that day?

Mr. Pomeroy: I will object to that question, if Your Honor please, on the ground that it is improper cross-examination. There was no mention of opium on my direct.

The Court: Didn't he make some reference to "this"?

Mr. Dore: Yes, Your Honor.

The Court: The objection is overruled.

Mr. Pomeroy: I do not know what this "this" was. Maybe he just meant the plate. I don't know. "This" certainly does not say opium.

Q. (By Mr. Dore): When you said you put "this" on the bed, what did you mean by that? [138]

A. The coffee.

Q. The what?

A. My coffee. I made coffee.

Q. Well, you pointed to the things in front of you.

A. I made a gesture.

The Court: The objection is sustained.

Mr. Dore: Yes, Your Honor.

Q. (By Mr. Dore): How long were you in bed?

A. When the officers arrived?

Q. Well, you said you were up in your apartment at approximately 10:00 o'clock in the morning.

A. In the morning? I got up at 7:30 and made coffee and brought the coffee in the bedroom, as it

(Testimony of Ruis Parker.)

is cold. I only have an electric heater in the apartment and I was lying listening to the radio.

Q. Were you in the apartment all day?

A. All day.

Q. How long were you in bed?

A. Until 7:30.

Q. 7:30 that evening? A. Yes, sir.

Q. Have you ever been convicted of a crime?

A. What kind of a crime?

Q. Any kind of a crime. A. Yes. [139]

Q. And what crime? A. Tending bar.

Q. When was that? A. Oh, several times.

Q. What years?

A. Oh, practically ever since I have been in Seattle the last time I worked more or less as a bartender.

Q. How long have you been in Seattle?

A. The last time I came here in 1938.

Q. Were you arrested for violation of the Steele Act in 1938? A. I don't recall.

The Court: Perhaps in your question you should advise him what you mean by the Steele Act or in some way identify what it is.

Q. Were you convicted for the offense of possessing liquor with intent to sell the same in 1938?

A. I don't believe so.

Q. Were you convicted in 1939? A. Yes.

Q. How many times in 1939?

A. I couldn't say. Twice a week I think it was.

Q. About twice a week? A. Yes.

(Testimony of Ruis Parker.)

Q. How many times in 1940? [140]

A. Oh, about the same amount,—when I was working.

Q. About twice a week?

A. Something like that.

Q. And in 1941, how many times were you convicted? A. I don't know.

Q. Well, approximately how many times?

A. Well, I only worked as a bartender until around the Easter season and I don't know how many times it happened before then.

Q. Do you recall being convicted on February the 25th, 1941? A. It is possible.

Q. And are there any other convictions?

A. I think one. After I came out of the service I was taken in preference to a bartender in a place. I was in because I did have such a record.

Q. What year was that?

A. That was in 1942.

Q. 1942. Were you convicted in 1943?

A. It was '43.

Q. 1943? A. Once, I believe.

Q. Were you convicted also on or about May 28th, 1943? A. That was the time.

Q. That was in Seattle here? [141]

A. It was.

Mr. Dore: No further questions.

Mr. Pomeroy: You may step down.

(Witness excused.)

Mr. Pomeroy: We will offer Defendant's Exhibit A-2.

Mr. Dore: Is that the chart?

Mr. Pomeroy: Yes.

Mr. Dore: No objection to the chart.

The Court: Defendant's Exhibit A-2 is now admitted.

(Defendant's Exhibit A-2 admitted in evidence.)

Mr. Pomeroy: I have no further witnesses, Your Honor.

The Court: Does the defendant rest?

Mr. Pomeroy: The defendant rests.

The Court: Any rebuttal?

Mr. Dore: No rebuttal, Your Honor.

May the witnesses be excused, Your Honor?

The Court: Is there any objection?

Mr. Pomeroy: No objection.

The Court: All witnesses in this case are excused permanently from appearing further at this trial.

(Testimony concluded.) [142]

The Court: How long do you wish to argue?

Mr. Pomeroy: I only need about ten minutes?

The Court: How much?

Mr. Pomeroy: About ten minutes.

The Court: How much does the plaintiff wish?

Mr. Dore: I request 30 minutes, Your Honor. I do not think I will use all that time, but I would like to have it, if necessary.

The Court: Each side may have 30 minutes, and the plaintiff may divide the 30 minutes allotted to it as between plaintiff's opening and closing argument.

I will now hear counsel from their present stations. Plaintiff may make its opening argument.

(Whereupon, arguments were made by respective counsel for the plaintiff and defendant.)

COURT'S DECISION

The Court: The proof before the Court in this case is that the front door to this apartment house was latched but not locked, and in order to enter the hallway all that had to be done was to turn the latch and walk in; that that was done pursuant to a telephone call to the police reporting a man dying, or a man poisoned, and thereafter the front door of the [143] apartment house was opened and the hallway entered by the police in that manner. Then after ascending the stairs, which was suggested by the informer over the telephone, the police found a door ajar with the defendant lying in bed in the room which was entered by that door that was ajar. And after they had gone into the room, and into the presence of the defendant who was lying in bed, the defendant pointed out the narcotics contraband, —called it to the attention of the officers. They were not searching for it at the time, did not know that it and the smoking opium paraphernalia were there until the defendant himself pointed it out and said "there it is."

There is nothing in those facts (and they are all the material facts which were testified to as to how his occurrence happened) that indicates unlawful search or seizure.

The circumstance that the Police Department personnel were the ones who developed this case, and after doing so turned the information concerning it over to the Federal authorities, may sometime inspire an appellate court having authority to change the rules to make such change. But so far as I know, under the rules now in effect and as they have existed during a substantial period of this country's judicial [144] history the circumstances here do not reflect any illegal association or cooperation between the police department of the City of Seattle and the Federal Narcotics Bureau. It is not within the authority of this Court, in my opinion, to hold in this case that there was any unlawful association or cooperation between those two law enforcement agencies. Should the Supreme Court of the United States decide to change the rules and declare that such action as was here taken by the police department and, that such consideration as the Narcotics Bureau later gave to the case, were improper, if that Court should hold that as a result thereof the action was an unlawful association and cooperation between those agencies, then that is a matter for such Appellate Court to so conclude, but it is not, in my opinion, within the authority of this Court to conclude that there was any such unlawful cooperation or association.

On the other hand, according to past judicial precedents applicable to the facts here, what was done in this case was lawful and appropriate and in all respects in order, so far as I am advised.

Accordingly, this Court does, in accordance with the rules relating to a trial before the Court without a jury, which is the situation here, and in accordance [145] with the evidence in this case, now make the general finding that the allegations of the indictment, and particularly Count I thereof, that being the only count, are sustained by the evidence;

And the Court does further specifically find from the evidence, beyond a reasonable doubt, that on or about the 24th day of November, 1948, at Seattle, in the Western District of Washington, Northern Division, Ruis Parker, the defendant in this case, did knowingly receive and conceal a quantity of narcotic drugs, to-wit: 294 grains of opium prepared for smoking and 75 grains of Yen Shee, knowing the same to have been imported into the United States contrary to law and that the defendant is guilty and is now convicted of the charge contained in said Count I of the Indictment.

Is there any reason why the Court should not continue this case to a later date for the purpose of imposing judgment and sentence?

Mr. Pomeroy: I think that probably would be proper.

Mr. Dore: No objection, Your Honor.

The Court: What date would be convenient to the parties?

Mr. Pomeroy: I do not have my calendar with me.

Before we go into that matter, may I make a [146] further statement?

The Court: I will hear you.

Mr. Pomeroy: For the record, I would like to point out that some comment was made in the Court's decision to the effect that—talking about an unlawful association between the City police authorities and Federal Enforcement agencies. The record should show that at no time did the defendant ever urge in any way that such association, if any, between the City law enforcement officials and the Federal enforcement officials would be unlawful, that it was only urged that there was an association for the purpose of pointing out to the Court that should they be associated than the City officials are bound by the same rules of gathering evidence as the Federal officials,—not that that association would be unlawful. So there was no urging by the defendant in that particular;

Further, that I would like to point out to the Court that the room in which the defendant was arrested did have a closed door, which was testified to by the police officers.

The Court: The Court, responding to the last statement, will say that I did not so understand the testimony. I understood the door was ajar, and, therefore, [147] open or partly open, and the Court so finds from the evidence, and beyond a reasonable doubt, that the door was in the condition stated by the Court.

Mr. Pomeroy: I do not have my calendar here, your Honor, so I cannot make any suggestion.

The Court: Today is the 4th day of August. Will counsel be ready by the 12th day of August?—That is a Friday—at 10:00 o'clock in the forenoon?

Mr. Pomeroy: Yes.

The Court: The case is continued until Friday, August the 12th, at 10:00 o'clock in the forenoon.

Does either side wish a probation investigation and report in this case, or does each side think that with the statements that have been made by counsel concerning the defendant and his background the Court can adequately consider the matter at the time without the aid of the probation investigation and report?

Mr. Pomeroy: I would not request one, your Honor. I do not think it is necessary. I think that we have enough of a record here so that your Honor can be very well acquainted with the background of the defendant.

Mr. Dore: I agree, your Honor.

The Court: Very well; in view of the statements [148] of counsel the Court will dispense with the probation investigation and report in this case.

Those connected with the case are excused until the time previously stated.

(Concluded.)

CERTIFICATE

I, Bernard Ayres, do hereby certify that I was the official court reporter for the above entitled court between August 1, 1949 and August 6, 1949, and as such was in attendance upon the hearing of the foregoing matter. I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ BERNARD AYRES,
Court Reporter.

[Endorsed]: Filed Nov. 1, 1949. [149]

[Endorsed]: No. 12395. United States Court of Appeals for the Ninth Circuit. Ruis Parker, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed November 7, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

No. 12395

UNITED STATES OF AMERICA,

Respondent,

vs.

RUIS PARKER,

Appellant.

STATEMENT OF POINTS UPON WHICH
APPELLANT RELIES AND PORTIONS
OF THE RECORD RELATING THERETO

Appellant, Ruis Parker, relies on this appeal upon the following points, to-wit:

1. The Court erred in denying defendant's petition and motion to suppress evidence.

2. The Court erred in admitting into evidence government's exhibits 1, 2 and 3.

3. The judgment of the Court was contrary to law.

4. The evidence was insufficient to support the judgment of the Court.

5. The Court erred in denying defendant's motion for a new trial.

The portions of the record necessary for the consideration of this point are:

1. All pleadings, affidavits and papers filed in this cause before the United States District Court heretofore designated by the defendant and trans-

mitted to the above-named Court by the Clerk of said District Court.

2. The entire transcript of record.

ALLAN POMEROY and

ERNEST R. CLUCK,

Attorneys for

Defendant-Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Nov. 30, 1949.